



**Mwau v Inspector General, National Police Service & 3 others; National Security Council & another (Interested Parties) (Employment and Labour Relations Petition E196 of 2025) [2025] KEELRC 2951 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2951 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E196 OF 2025  
HS WASILWA, J  
OCTOBER 30, 2025**

**BETWEEN**

**HON JOHN HARUN MWAU ..... PETITIONER**

**AND**

**THE INSPECTOR GENERAL, NATIONAL POLICE SERVICE .... 1<sup>ST</sup>  
RESPONDENT**

**NATIONAL POLICE SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL POLICE SERVICE COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**THE NATIONAL SECURITY COUNCIL ..... INTERESTED PARTY**

**INDEPENDENT POLICING OVERSIGHT AUTHORITY .... INTERESTED  
PARTY**

**JUDGMENT**

1. By a Petition dated 30<sup>th</sup> September 2025, the Petitioner sought for the following reliefs against the Respondents jointly and severally;-
  - a. A declaration be and is hereby issued that recruitment into the National Police Service is a constitutional function exclusively vested in the National Police Service as a National Security Organ under Article 238(2)(d) and Article 239(1)(c) of *the Constitution*.
  - b. A declaration be and is hereby that the Article 238(2)(d) of *the Constitution* provides that national security of Kenya shall be promoted and guaranteed in accordance with the following



principles—, (d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions.

- c. A declaration be and is hereby issued that there are three national Security organs under Article 239(1) of *the Constitution* (a) the Kenya Defence Forces; (b) the National Intelligence Service; and (c) the National Police Service.
- d. A declaration be and is hereby issued that the National Police Service Commission is not a national security organ under Article 239(1) of *the Constitution*.
- e. A declaration be and is hereby issued that the recruitment by national security organs under Article 238(2) (d) of *the Constitution* can only be done by the national security organ itself not any other entity outside the national security organ.
- f. A declaration be and is hereby issued that Article 243 establishes the National Police Service and that it constitutes the Kenya Police Service and the Administration Police Service and that the constitutional functions and duties vested in the national police service must be performed by it and not any other person.
- g. A declaration be and is hereby issued that Article 244(a) and (d) of *the Constitution* vests on the National Police Service the function to (a) strive for the highest standards of professionalism and discipline among its members; and (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.
- h. A declaration be and is hereby issued that Article 245(1) &(2)(b) of *the Constitution* establishes the Inspector General of the National Police Service and provides in mandatory terms that the Inspector General shall exercise independent command over the National Police Service.
- i. A declaration be and is hereby that Article 245(2)(b) and (4)(c) of *the Constitution* vests independent command of the National Police Service and provides that no person may give a direction to the Inspector-General with respect to the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
- j. A declaration be and is hereby issued that Article 246(1) and (3) of *the Constitution* establishes the National Police Service Commission and vests on it the power to appoint and recruit persons holding or acting in offices in the service and to exercise disciplinary control, transfer, and promote persons holding or acting in offices.
- k. A declaration be and is hereby issued that Constitution creates two distinct classes of persons in the service: members of the service who are under the independent command of the Inspector General and persons holding offices in the service that are under the remit of the National Police Service Commission.
- l. A declaration be and is hereby issued that article 238(2)(d), 239(1), 243, 244(a) & (d) and 245 1, (2)(b) and (4)(c) of *the Constitution* vests on the National Police Service and the Inspector General the independent command concerning the recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, without any direction or control from the National Police Service.
- m. A declaration be and is hereby issued that Articles 238(2)(d), 239(1) 243, 244(a) & (d) and 245 1, (2)(b) and (4)(c) of *the Constitution* read with Sections 4 and 22 of the *National Police Service Act* and the first schedule to the Act in relation to members of the service relates to Inspector General; Deputy Inspector General Senior Assistant Inspector General; Assistant Inspector



General; Senior Superintendent; Superintendent; Assistant Superintendent; Chief Inspector; Inspector; Senior Sergeant; Sergeant; Corporal; and Constable.

- n. A declaration be and is hereby issued that the under the constitutional doctrine of independent command under Article 245(1)(2)(b) and (4)(c) of *the Constitution*, the National Police Service Commission has no power in relation to recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service.
- o. A declaration be and is hereby issued that any purported recruitment process advertised or initiated by the said Peter Leley, EBS and/ or the National Police Service Commission is unconstitutional, ultra vires, null and void ab initio, for violating Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4)(c) of *the Constitution*.
- p. A declaration be and is hereby issued declaring the Legal Notice No. 159 of 19<sup>th</sup> September 2025 as unconstitutional, for violating Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4)(c) of *the Constitution*.
- q. A declaration be and is hereby issued that under Article 240 of *the Constitution*, the only body with supervisory powers over the National Police Service is the National Security Council.
- r. A declaration be and is hereby issued those provisions of Section 10(1)(a), (c),(k), 10(2), 10(4)(c)(d)(e)(f) & (g), 11(1)(e) &(j) and 12(a) of the *National Police Service Commission Act* are unconstitutional to the extent that they purport to interfere with the independent command of the Inspector General under in respect of members of the services under Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4)(c) of *the Constitution*.
- s. A declaration be and is hereby issued those provisions of Sections 2(1); 8A(1);10(1) (g)& (ga) and 21(2)(e), 29(4), 33, and of the *National Police Service Act* are unconstitutional to the extent that they purport to interfere with the independent command of the Inspector General in respect of members of the services under Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4)(c) of *the Constitution*.
- t. A permanent order be and is hereby issued directed at the National Police Service Commission barring and/or restraining it from the recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, including a permanent stay of the advertisement dated 19<sup>th</sup> September, 2025 on the Daily Nation and legal Notice no. 159 of 19<sup>th</sup> September 2025.
- u. Costs of this Petition.

### **Petitioner's Case**

- 2. The Petitioner avers that on 19<sup>th</sup> September 2025, the 3<sup>rd</sup> Respondent published an advert titled "Advertisement for recruitment of Police Constables into the National Police Service" in the Daily Nation stating: "Pursuant to *the Constitution* of Kenya Articles 246(3), 246(4), 243, 238(d), 10, sections 10, 11 and 12 of the *National Police Service Commission Act* Cap 85 and the *National Police Service Act* Cap 84, the National Police Service Commission seeks to recruit suitably qualified persons to be trained as Police Constables."
- 3. On the same day, the 3<sup>rd</sup> Respondent also caused the publication of Kenya Gazette Supplement no. 159 of 19<sup>th</sup> September, 2025 titled "the National Police Service Commission (Recruitment and



Appointment) Regulations, 2025.” Regulation 3 provides that they shall apply to the appointment and recruitment of the members of the Service, while Regulation 4 provides:

- “ 4. The Object of these Regulations is to -
- a. Provide a standardised procedure for the recruitment of the members of the service;
  - b. ensure the recruitment and appointment process is fair, objective, transparent and upholds the values, principles and standards provided in *the Constitution* and the applicable written laws;
  - c. specify the responsibilities of the Commission and recruitment panels in the recruitment process; and
  - d. enhance the efficiency and accountability of the recruitment process, including through use of technology.”

4. It is the Petitioner’s case that the 3<sup>rd</sup> Respondent’s actions are unconstitutional, null and void, as Article 238(2)(d) of the Constitution provides that the recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions. The National Security Organs are clearly identified under Article 239(1) to include: the Kenya Defence Forces; the National Intelligence Service; and the National Police Service.
5. The Petitioner avers that the National Police Service Commission is not a national security organ, and cannot therefore purport to recruit under article 238(2)(d) of *the Constitution*; as it provides that the recruitment is by national security organ, in this case the National Police Service, and the purport of the 3<sup>rd</sup> Respondent to recruit is therefore unconstitutional and invalid under Article 2(4) of *the Constitution*.
6. The Petitioner avers that the 3<sup>rd</sup> Respondent’s purport to recruit constables for the National Police Service (who are members of the service) contravenes Article 245(2)(b) and (4) which provides that the Inspector General shall exercise independent command of the national police service and that no person can give direction to the Inspector General on the employment, assignment, promotion, suspension or dismissal of the members of the service.
7. The Petitioner reiterates that the 3<sup>rd</sup> Respondent’s Kenya Gazette Supplement no. 159 of 19<sup>th</sup> September, 2025 whose object to provide for recruitment of the members of the service is unconstitutional and in violation of articles 238(2)(d) and 245(2)(b) and (4) of *the Constitution*, as the Inspector General has independent command of the national police service and cannot take any direction from any person on the employment, assignment, promotion, suspension and dismissal of the members of the service.
8. It is the Petitioner’s case that recruitment under Article 238(2)(d) is exclusive to National Security Organs; this is an explicit constitutional directive that recruitment of members of a national security organ is to be carried out by that organ itself, and no other body. This provision sets a standard both in process (who recruits) and in outcome (diversity and equity).
9. The Petitioner avers that the 3<sup>rd</sup> Respondent’s recruitment mandate under Article 246(3) is distinct and applies only to civilian human resource positions within the National Police Service (National Police Service), not to sworn members of the Service whose recruitment falls under Article 238(2)(d). This separation preserves operational security, ensures recruitment is handled by those with functional and operational competence, and protects sensitive processes from unnecessary civilian intrusion.



10. It is the Petitioner's case that the Inspector General of the National Police Service exercises independent command, as protected by Article 245(4)(c), over the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
11. The Petitioner avers that the 3<sup>rd</sup> Respondent manages civilian human resource for functions within the 2<sup>nd</sup> Respondent under Article 246(3). Additionally, the presence of both the Inspector General and the Deputy Inspector General as members of the 3<sup>rd</sup> Respondent is on purpose as the consumers of the civilian human resource, but the 3<sup>rd</sup> Respondent has no mandate over functions and operational recruitment or training of the 2<sup>nd</sup> Respondent's members which is a constitutional mandate for National Police Service as a National Security Organ. This ensures that while the 2<sup>nd</sup> Respondent remains subject to constitutional accountability; its operational secrecy and readiness are not compromised by inappropriate external interference.
12. It is the Petitioner's case that the independence of the Inspector General is a constitutional safeguard against undue influence. Under Article 245(4)(c), the Inspector General has exclusive authority over personnel matters relating to members of the 2<sup>nd</sup> Respondent, including employment, assignment, promotion, suspension, and dismissal. This operational independence excludes any role for the 3<sup>rd</sup> Respondent in these functions and ensures that command decisions are made by the security leadership with direct responsibility for operational readiness. Thus, the 3<sup>rd</sup> Respondent's purport to exercise powers of recruitment of members of service, or in any way to deal with human resource for members of the service is unconstitutional and invalid.
13. He further avers that National Security Council, established under Article 240, exercises supervisory control over national security organs through strategic oversight rather than operational management. Article 240(3) creates a supervisory framework that focuses on policy coordination and strategic direction, while preserving the operational independence of individual National Security Organ. The Inspector General of the 2<sup>nd</sup> Respondent participates in this council as a member, contributing to high-level security coordination while maintaining independent command over the National Police Service. This structure demonstrates the constitutional intent to separate strategic oversight from operational command, with issues of recruitment, training, employment, promotion, suspension and dismissal of members of the service and the entire payroll management falling clearly within the operational sphere and independent command of the Inspector General.
14. It is the Petitioner's case that there are two separate distinct recruitment routes under Chapter Fourteen of *the Constitution*: recruitment by the National Police Service of "members of the service" and recruitment by the National Police Service Commission of "persons to hold or to act in offices in the service".
15. The Petitioner avers that Articles 238 (2)(d), 239(1), 244(a) &(d) and 245(2)(b) and(4)(c) of *the Constitution* mandates the 2<sup>nd</sup> Respondent and the Inspector General as the independent commander of the National Police Service to recruit, train, employ, assign, promote, suspend and dismiss and strive for highest standards of professionalism and discipline among members of the service. These members constitute the rank as per the first schedule to the *National Police Service Act* and who are organized under the hierarchical ranks that constitute the command.
16. In contrast, Article 246(3) of *the Constitution* empowers the 3<sup>rd</sup> Respondent to recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service. The Commission also exercises disciplinary control over and remove persons holding or acting in offices within the service. The 3<sup>rd</sup> Respondent's mandate is therefore with "persons holding or acting in offices in the service", and not "the members of the



- service” recruited pursuant to Articles 238 (2)(d), 239(1), 244(a) &(d) and 245(2)(b) and(4)(c) of the Constitution, whose membership is set at First Schedule to the National Police Service Act.
17. It is the Petitioner’s case that certain sections of the National Police Service Act and the National Police Service Commission Act, and the entire National Police Service Commission (Recruitment and Appointment) Regulations, 2025 are inconsistent with the Constitution and are therefore void.
  18. The Petitioner avers that the 3<sup>rd</sup> Respondent’s National Police Service Commission (Recruitment and Appointment) Regulations, 2025 which provide for the recruitment of the members of a national security organ by an entity that is not a national security organ is in inconsistent with Articles 238(2) (d) and 239(1), which decrees that the recruitment shall be by the national security organ.
  19. The Petitioner avers that the 2<sup>nd</sup> Respondent having recruited its members in line with Article 238(2) (d) as a national security organ, it is mandated to train such members in line with Article 244(d) of the Constitution. The 3<sup>rd</sup> Respondent has no power, mandate or duty to train the members of the national police service, more so as it is not a member of the national security organ.
  20. It is the Petitioner’s case that the 3<sup>rd</sup> Respondent’s actions are invalid and in violation of Articles 238(2)(d), 239(1), 244(a) & (d), 245(2)(b) and (4)c) of the Constitution, which provide that no person may give a direction to the Inspector General in respect to the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
  21. The Petitioner asserts that the 3<sup>rd</sup> Respondent’s attempt and purport at involvement in the recruitment, management of the payroll, and human resource functions of members of the service, who are officers to be recruited by a national security organ under Article 238(2)(d) and trained under Article 244(d) creates an unconstitutional and untenable duality of command, in clear contravention of Articles 238(2)(d), 239(1), 244(a) & (d), 245(2)(b) and (4)c) of the Constitution.
  22. The Petitioner avers that definition of members of the service under Section 2(1) of the National Police Service Act is unconstitutional to the extent that it defines member of the Service to include civilian members of staff of the Service, when the Constitution clearly delineates between “members of the service” in respect of whom the Inspector General has independent command, including on all personnel matters and “persons holding or acting in offices in the service, in respect of which the National Police Service Commission has control of personnel matters.
  23. It is the Petitioner’s case that the 3<sup>rd</sup> Respondent’s role under Article 246(3) of the Constitution is limited to persons holding or acting in the offices in the service, and not to the members of the service in respect of which the Inspector General has independent command of in respect of recruitment, training, employment, assignment, promotion, suspension and dismissal. Therefore, Section 4(1) of the National Police Service Act is unconstitutional to the extent that it purports to extend the remit of the 3<sup>rd</sup> Respondent to the members of the service, including determining the maximum members of the service, in respect of which the Inspector General has independent command.
  24. The Petitioner avers that Section 10(1)(g) & (ga) of the National Police Service Act purports to limit the powers of the Inspector General of the members of the service by providing that the Inspector General shall determine the distribution and deployment of officers in the Service in the rank of Superintendent and recommend to the Commission and the County Policing Authorities for the distribution and deployment of officers above the rank of Superintendent. These sections are therefore void to the extent that they limit the independent command of the Inspector General in terms of deployment and distribution of the members of the service, and to the extent that they usurp the powers of the National Security Council and Parliament under Article 240(3) & (8) of the Constitution, which is the only entity that can supervise the 2<sup>nd</sup> Respondent on matters of national security and deployment of forces.



25. The Petitioner avers that Section 33 of the [National Police Service Act](#) is unconstitutional to the extent that it purports to divest the Inspector General of his independent command and power to assign members of the service to the Directorate, and to vest the same on the National Police Service Commission, which only is mandated to appoint, recruit and transfer persons holding or acting in offices in the service, and not members of the service.
26. The Petitioner avers that Section 72 of the [National Police Service Act](#) contravenes Article 247 of [the Constitution](#) that provides that “Parliament may enact legislation establishing other police services under the supervision of the National Police Service and the command of the Inspector-General of the Service”. The Commission has no role to play in any establishment or appointment of member of the service, since [the Constitution](#) is clear that even where a special police service is established, the supervision remains under the National Police Service, and under the Command of the Inspector General of the National Police Service.
27. Sections 10(1)(a)(c) &(k); 10 (4)(c)(d)(e)(f) &(g) and 11(e) of the [National Police Service Commission Act](#) contravene Article 245(2)(b) and (4)(c) of [the Constitution](#), which provides that the Inspector General shall exercise independent command over the National Police Service and that no person may give direction to the Inspector General on the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service. The Commission only has mandate over persons holding or acting in offices in the service, and not on the members of service, and the purport to extend the powers of the Commission to the members of service under Sections 10(1)(a)(c) &(k) and 10 (4)(c)(d)(e)(f) &(g) and 11(e) of the [National Police Service Commission Act](#) undermines the Inspector General's independent Command, more so when article 245(4)(c) of the Constitution is clear that no person may give direction to the Inspector General on the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
28. It is the Petitioner’s case that by allowing the National Police Service Commission to be engaged in recruitment, training, assignment, deployment, discipline and removal of the members of the service, there is likelihood of leakage or unauthorized access to the National Police Service payroll, recruitment and training criteria and disclosure of covert and sensitive operations that would end up undermining the independent command of the Inspector General and thus national security. These threats include jeopardizing of undercover officers and their families; exposing the strength and structure of sensitive units; and enabling criminal elements to target, intimidate, or corrupt officers.
29. Additionally, the [Public Finance Management Act](#) creates a comprehensive framework for financial accountability that reinforces the IG's independent command, entailing recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, all which animate financial implications. As the designated accounting officer for the National Police Service, the IG bears personal responsibility for all financial management functions, including budget execution, expenditure control, and fiscal discipline. Article 226(2) of [the Constitution](#) requires that "the accounting officer of a national public entity is accountable to the National Assembly for its financial management."

### **1<sup>st</sup> Respondent’s Case**

30. The 1<sup>st</sup> Respondent filed a replying affidavit dated 9<sup>th</sup> October 2025.
31. The 1<sup>st</sup> Respondent avers that it is a constitutional office established under Article 245(1) of [the Constitution](#) and it is mandated by [the constitution](#) to exercise independent command over the National Police Service, the 2<sup>nd</sup> Respondent herein, which is established under Article 243(1) of [the Constitution](#).



32. The 1<sup>st</sup> Respondent avers that Article 245(1) of *the Constitution* places the 2<sup>nd</sup> Respondent under his independent command and Article 245(4)(c) of *the Constitution* protects his functional independence on matters employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
33. The 1<sup>st</sup> Respondent avers that he can only be directed by the Director of Public Prosecutions on investigation of any information or allegation of criminal conduct and the Cabinet Secretary on matters of policy, but no person may direct him in respect to employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
34. It is the 1<sup>st</sup> Respondent's case that the 2<sup>nd</sup> Respondent is a National Security Organ and as such, *the Constitution* placed its command into the hands of a single person, the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent is a member of the National Security Council, which is the supervisory body of the National Security Organs as expressly provided by Article 240(3) of *the Constitution*. Therefore, it cannot have been the intention of the framers of *the Constitution* to have the 2<sup>nd</sup> Respondent commanded by the 3<sup>rd</sup> Respondent.
35. The 1<sup>st</sup> Respondent avers that best practice in disciplined services globally is that they are commanded by a single person in order to have a clear chain of command.
36. The 1<sup>st</sup> Respondent avers that the 3<sup>rd</sup> Respondent is established under Article 246(1) of *the Constitution* and its mandate is set out under Article 246(3) of *the Constitution*, which provides that, the Commission shall recruit and appoint persons to hold or act in offices in the Service, confirm appointments, and determine promotions and transfers within the National Police Service.
37. The 1<sup>st</sup> Respondent confirms that *the Constitution* creates two cadres of staff in the National Police Service being; members of the Service; and persons who hold or act in offices in the Service. Article 245(4)(c) of *the Constitution* mandates the 1<sup>st</sup> Respondent to employ, assign, promote, suspend or dismiss members of the National Police Service, which mandate is not subject to control and/or direction of any person or organ. Whereas, the 3<sup>rd</sup> Respondent is mandated under Article 246(3) to recruit and appoint persons to hold or act in offices in the Service.
38. The 1<sup>st</sup> Respondent avers that the 2<sup>nd</sup> Respondent is a disciplined service and its norms and doctrine may not necessarily align with the norms of the mainstream civil service. Members of the Service are expected to adhere to stricter procedures, rules, regulations, and code of conduct pursuant to Article 244(a) of *the Constitution*.
39. Additionally, the 2<sup>nd</sup> Respondent is under a higher degree of control, obedience, and professionalism, to ensure efficient and effective action, especially in high-risk security situations. This is acknowledged under Article 24(5) of *the Constitution* which limits certain Rights and Fundamental Freedoms for Members of the Service including labour relations under Article 41 of *the Constitution*. Hence the responsibility of ensuring the Service is managed as a disciplined Service is exclusively vested on the 1<sup>st</sup> Respondent pursuant to Article 245 of *the Constitution*.
40. The 1<sup>st</sup> Respondent avers that the 3<sup>rd</sup> Respondent is not a National Security Organ and therefore it does not have the powers to recruit for or on behalf of the 2<sup>nd</sup> Respondent, which is a National Security Organ. The recruitment of members of the National Police Service is by the 2<sup>nd</sup> Respondent by dint of the provisions of Article 238(2)(d) of *the Constitution*. It is the responsibility of the 2<sup>nd</sup> Respondent to ensure that its recruitment meets the constitutional imperative of diversity of the Kenyan people in equitable proportions.



41. It is the 1<sup>st</sup> Respondent's case that the entire recruitment process, including any advertisement for recruitment of Members of the Service, by the 2<sup>nd</sup> Respondent as a National Security Organ in accordance with Article 238(2)(d) of *the Constitution* vests in the 2<sup>nd</sup> Respondent.
42. Further, the 3<sup>rd</sup> Respondent has no mandate under *the Constitution* to advertise for recruitment of members of the Service. Further, the budgetary allocation for recruitment of members of the Service, which includes the cost of advertisement for recruitment, lies with the 2<sup>nd</sup> Respondent.
43. The 1<sup>st</sup> Respondent asserts that any function or role exercised by the 3<sup>rd</sup> Respondent must at all times be confined or construed to refer to persons who hold or act in offices in the Service; this marks the four corners of the 3<sup>rd</sup> Respondent's mandate under Article 246(3) of *the Constitution*.
44. The 1<sup>st</sup> Respondent avers that the impugned Kenya Gazette Supplement No. 159 of 19 September, 2025 titled "the National Police Service Commission (Recruitment and Appointment) Regulations 2025" and any provision of any statute to the extent that it purports to expand the mandate of the 3<sup>rd</sup> Respondent beyond the four corners stipulated under Article 246(3) of *the Constitution* aforesaid is manifestly unconstitutional, null and void pursuant to Article 2(2) and 2(4) of *the Constitution*.
45. The 1<sup>st</sup> Respondent avers that the 3<sup>rd</sup> Respondent's mandate is integral to the effective performance of the constitutional functions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; as the persons holding or acting in offices in the Service falling under the 3<sup>rd</sup> Respondent's mandate, provide critical and essential civilian support to the Service. The drafters of *the Constitution* were cognizant of this critical and essential role played by the civilian support staff thus informing establishment of the 3<sup>rd</sup> Respondent to provide and manage this vital component of the Service.
46. It is the 1<sup>st</sup> Respondent's case that persons holding or acting in offices in the Service are subject to a higher degree of discipline and conduct distinct from the general civil service informing the rationale to establish a distinct commission separate from the Public Service Commission. The said civilian staff once recruited and employed by the 3<sup>rd</sup> Respondent join the Service and perform their various functions together with the non-civilian members of the Service under the independent command of the 1<sup>st</sup> Respondent.

## **2<sup>nd</sup> Respondent's Case**

47. The 2<sup>nd</sup> Respondent filed grounds in support of the petition dated 21<sup>st</sup> October 2025, on the following grounds:
  1. That the Petitioner has properly invoked this Honourable Court's jurisdiction to hear and determine the Petition pursuant to Article 162(2)(a) of *the Constitution* and section 12(1) of the *Employment and Labour Relations Court Act*, 2011.
  2. That the Petition raises an employment and labour relations dispute concerning the determination of who, between the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, is the lawful employer of members of the National Police Service, and who bears the authority to recruit, appoint, employ, assign, transfer, promote, suspend and discipline them.
  3. That the question of who exercises the powers of recruiting, employing and dismissal of members of the service lies at the core of the employment relationship within the Service, and therefore falls squarely within the mandate of this Honourable Court.



4. That the National Police Service is a National Security Organ established under Article 239(1) (c) of *the Constitution* with a primary mandate to promote and guarantee national security in accordance with the principles set out under Article 238(2) of *the Constitution*.
5. That Article 238 of *the Constitution* sets out the principles of national security and requires the 2<sup>nd</sup> Respondent to carry out recruitment that reflects the diversity of all Kenyan people in equitable proportions. This obligation to ensure recruitment reflects the diversity of the Kenyan people is placed squarely on the National Security Organs themselves, not on any external body such as the 3<sup>rd</sup> Respondent.
6. That Article 244 (a) and (d) of *the Constitution* mandates the 2<sup>nd</sup> Respondent to strive for the highest standards of professionalism and discipline among its members and to train staff to the highest possible standards of competence. These functions have not been vested upon the 3<sup>rd</sup> Respondent.
7. That the independence and command structure of the 2<sup>nd</sup> Respondent are constitutionally guaranteed under Article 245(2)(b) and 245(4)(c), which vest the 1<sup>st</sup> Respondent with independent command over the Service on matters of employment, assignment, promotion, suspension, and dismissal of members of the Service.
8. That the 3<sup>rd</sup> Respondent's mandate is limited by Article 246(3) of *the Constitution* to the recruitment and appointment of persons to hold or act in offices in the Service, and not the recruitment of members of the disciplined Service.
9. That *the Constitution* creates two distinct cadres of staff in the 2<sup>nd</sup> Respondent, being; members of the Service and persons who hold or act in offices in the Service, each governed by separate oversight and management structures.
10. That the impugned National Police Service Commission (Recruitment and Appointment) Regulations, 2025 unconstitutionally and unlawfully extend the powers of the 3<sup>rd</sup> Respondent into areas expressly reserved to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, contrary to Articles 2(4) and 245(4) (c) of *the Constitution*.
11. That the constitutional principle of independence of command is critical to maintaining discipline, unity of direction, and operational efficiency within the 2<sup>nd</sup> Respondent, which is a disciplined service as contemplated under Article 244(a).
12. That the 3<sup>rd</sup> Respondent is not a National Security Organ within the meaning of Article 239(1) and therefore cannot constitutionally exercise powers that affect the structure, command, or discipline of the 2<sup>nd</sup> Respondent.
13. That under Article 247 of *the Constitution*, even special police services that may be established by statute remain under the command of the Inspector General, confirming that command of all police services, including recruitment and discipline of their members, rests within the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
14. That the Petition promotes constitutional fidelity and institutional harmony by seeking to preserve the independence of the 2<sup>nd</sup> Respondent and prevent unconstitutional encroachment by the 3<sup>rd</sup> Respondent.
15. That it is in the public interest and in furtherance of good governance and national security that this Honourable Court affirms the independent command of the 2<sup>nd</sup> Respondent as



envisaged under *the Constitution* and invalidates the impugned regulations to the extent of their inconsistency.

48. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent further filed grounds of opposition dated 2<sup>nd</sup> October 2025 on the following grounds:
1. The Petitioner does not have an arguable prima facie case with high likelihood of success.
  2. The Petitioners will not suffer any prejudice if the conservatory orders sought are not granted.
  3. It is in the public interest that the conservatory orders sought are not granted as granting the said orders will disrupt smooth operation of the police force, which will adversely affect the national security.
  4. The Petition does not meet the threshold of a constitutional petition as set in the case of Anarita Karimi v Republic (No.1) (1979 1 KLR 154 and Mumo Matemu v Trusted Society of Human Rights Alliance, Civil Appeal No.290 of 2012(2013) having failed to set out with reasonable degree of precision that of which the Petitioners complains, provisions said to have been infringed or violated and the manner in which they are alleged to have been infringed or violated.

### **3<sup>rd</sup> Respondent's Case**

49. In opposition to the Petition, the 3<sup>rd</sup> Respondent filed a notice of preliminary objection dated 20<sup>th</sup> October 2025 on the following points of law:
1. That this Honourable Court lacks the jurisdiction to hear and determine the Petition and Notice of Motion Application dated 30<sup>th</sup> September 2025.
  2. That the issues raised in the Petition and Notice of Motion Application fall outside the scope of jurisdiction conferred upon this Honourable Court under Section 12(1) and (2) of the *Employment and Labour Relations Court Act*, Cap 8E, as they do not arise from or relate to an employment or labour relations dispute within the meaning of the said provisions.
  3. That in view of the foregoing, the Petition and Notice of Motion Application are improperly before this Honourable Court. The 3<sup>rd</sup> Respondent therefore prays that the same be struck out in their entirety, as they offend the express provisions of the law governing the jurisdiction of this Honourable Court and are consequently null and void ab initio.
50. The 3<sup>rd</sup> Respondent further filed a replying affidavit dated 9<sup>th</sup> October 2025, sworn by its Commission Secretary/Chief Executive Officer, Peter Leley.
51. The 3<sup>rd</sup> Respondent avers that pursuant to Article 246(3)(a) of *the Constitution*, its mandate includes to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police.
52. The 3<sup>rd</sup> Respondent avers that the Petition seeks broad constitutional declarations involving the interpretation and application of Articles 238,239, 240, 243, 244, 245,246, 247, 258 and 260 of *the Constitution* most of which pertain to the principles of national security, the establishment of national security organs, the National Security Council and the independent command of the Inspector General.
53. It is the 3<sup>rd</sup> Respondent's case that save for Article 246, which establishes the National Police Service Commission and outlines its mandate relating to recruitment and disciplinary control of persons holding or acting in offices within the Service, all the other Articles cited in the Petition have no nexus



- whatsoever to employment or labour relations and therefore fall outside the jurisdiction conferred upon this Court under Section 12 of the *Employment and Labour Relations Court Act*.
54. The 3<sup>rd</sup> Respondent contends that the Petition raises pure constitutional questions on the structure, command, and coordination of national security organs, which are matters that are properly reserved for the High Court under Article 165(3)(d) of *the Constitution*.
  55. The 3<sup>rd</sup> Respondent avers that it was established for the sole purpose of ending political interference and executive control over human resource management within the Police Service, with a particular focus on the uniformed members of the Service. The 3<sup>rd</sup> Respondent was borne out of the policing reform agenda recommended by the Commission of Inquiry into Post-Election Violence (CIPEV) and the Ransley Task Force on Police Reforms, both of which addressed systemic failures in the management of uniformed officers.
  56. It is the 3<sup>rd</sup> Respondent's case that it erroneous to suggest that its mandate is confined to civilian staff yet it is a creation of the police reform process, which was entirely directed at restoring professionalism, accountability and meritocracy among the uniformed officers, whose recruitment, promotion and discipline had historically been subject to political and executive manipulation.
  57. The 3<sup>rd</sup> Respondent contends that civilian staff who members of the National Police Service under Section 2 of the *National Police Service Act*, were never the subject of the reform reports, as their recruitment and promotion were neither in dispute nor influenced by politics or the Executive. The 3<sup>rd</sup> Respondent's constitutional mandate under Article 246 of *the Constitution* was, therefore, designed to safeguard the integrity of human resource management within the National Police Service, ensuring that all members serving under the Service are treated uniformly, fairly, and independently of political or external influence.
  58. The 3<sup>rd</sup> Respondent contends that it is constitutionally mandated to manage all human resource functions for persons serving in or holding offices within the Service thereby ensuring uniformity, fairness, and insulation from political or executive influence.
  59. The 3<sup>rd</sup> Respondent avers that Article 234 of *the Constitution* expressly recognises certain commissions as distinct employer commissions within the public service. Clause (3) excludes from the mandate of the Public Service Commission any office or position that falls under the Parliamentary Service Commission, the Judicial Service Commission, the Teachers Service Commission, or the National Police Service Commission. Members of the National Police Service, whether uniformed or civilian, are therefore employed under the National Police Service Commission.
  60. The 3<sup>rd</sup> Respondent avers that although uniformed members of the Service are designated by ranks rather than conventional office titles, each rank nonetheless constitutes an office as it carries distinct responsibilities, authority and remuneration. Importantly the ranking structure within the service is determined and regulated by the 3<sup>rd</sup> Respondent in exercise of its constitutional mandate and as expounded by section 4 (1) of the *National Police Service Act*.
  61. It is the 3<sup>rd</sup> Respondent's case that Article 245(2) (b) of *the Constitution* provides that the Inspector-General shall exercise independent command over the National Police Service. The independent command is expressly defined under Section 8A of the *National Police Service Act* as responsibility over all matters relating to the command and discipline of the Service, subject to the disciplinary control of the 3<sup>rd</sup> Respondent. Article 246(3)(b) of *the Constitution* asserts that the 3<sup>rd</sup> Respondent shall exercise disciplinary control over and remove persons holding or acting in offices within the Service.



62. The 3<sup>rd</sup> Respondent avers that the term independent does not, however, extend to the constitutional imperative of the mandate of the Commission on human resource management in the Service and neither does it oust the authority for oversight and supervision under Article 239(5) of *the Constitution* that allows for civilian authority over security organs.
63. The 3<sup>rd</sup> Respondent avers that Article 245(4)(c) of *the Constitution* serves as a constitutional safeguard reinforcing the autonomy of the Inspector General in the exercise of operational command. It restricts any person, including the Cabinet Secretary or any other authority from giving direction to the Inspector General in matters relating to the employment, assignment, promotion, suspension, or dismissal of members of the Service. This protection ensures that operational and disciplinary decisions made by the Inspector General within his or her lawful sphere are free from political or external interference.
64. However, this provision, does not confer human resource powers, functions, or mandates upon the Inspector-General as alleged in the petition or at all. Its nature is protective rather than constitutive, its purpose being to preserve the independent command already conferred under Article 245(2) (b). The actual mandate over human resource matters including recruitment, appointment, promotion, transfer and disciplinary control is constitutionally vested in the 3<sup>rd</sup> Respondent pursuant to Article 246(3) of *the Constitution*.
65. It is the 3<sup>rd</sup> Respondent's case that the constitutional separation between the Inspector-General's command function under Article 245 and the 3<sup>rd</sup> Respondent's human resource mandate under Article 246(3) is deliberate and essential to maintaining institutional accountability, professionalism and checks and balances within the National Police Service. Whereas the 1<sup>st</sup> Respondent is responsible for operational command and discipline within the Service, the 3<sup>rd</sup> Respondent is vested with the authority to manage recruitment, appointments, promotions, transfers and disciplinary control. This structural separation prevents the concentration of both operational and employment powers in a single office, thereby safeguarding the independence, transparency and integrity of the National Police Service.
66. The 3<sup>rd</sup> Respondent avers that the purposive and contextual reading of Articles 245 and 246 therefore demonstrates that the framers of *the Constitution* intended a functional distinction between operational command and human resource management. The Inspector General commands the Service in the discharge of policing duties, while the National Police Service Commission manages the Service's human resource functions in accordance with due process and constitutional safeguards.
67. It is the 3<sup>rd</sup> Respondent's case that to interpret Article 245(4)(c) as conferring upon the Inspector-General absolute employment and disciplinary authority over all members of the Service would offend the constitutional architecture and render Article 246(3) redundant. Such an interpretation would actually undermine independent command as it does not acknowledge the authority vested on the 1<sup>st</sup> Respondent as a Commissioner who is co-equal to civilian authority when he is exercising his duties of employment as a Commissioner rather than a Commander subject to policy direction and oversight and subject to civilian authority in context of Article 239(5) which provides that national security organs shall be subordinate to civilian authority.
68. The 3<sup>rd</sup> Respondent avers that the correct and purposive interpretation of Articles 245 and 246 is that the Inspector-General's independent command relates to operational and administrative control, while the National Police Service Commission's mandate extends to all matters of human resource management within the Service, including recruitment, appointment, confirmation of appointments promotion, transfers, and discipline, subject to due process and constitutional oversight.



69. The 3<sup>rd</sup> Respondent avers that although the Inspector-General exercises independent command over the National Police Service, that office is not an independent office within the meaning of Chapter Fifteen of *the Constitution*. The independence contemplated under Article 245 is operational in nature, confined to ensuring impartial decision making in policing functions, and does not equate to the institutional independence vested in constitutional commissions and independent offices such as the 3<sup>rd</sup> Respondent, the Auditor-General, or the Controller of Budget under Article 249(2)(b). The two forms of independence are therefore distinct but complementary.
70. It is the 3<sup>rd</sup> Respondent's case that Article 239(5) expressly provides that national security organs shall be subordinate to civilian authority, thereby reinforcing that the Inspector-General's operational autonomy must coexist with civilian oversight, particularly in matters relating to the human resource mandate. The 2<sup>nd</sup> Respondent therefore operates within a constitutional framework that ensures accountability to the people of Kenya through designated institutions, including the 3<sup>rd</sup> Respondent, which is established under Article 246 of *the Constitution*.
71. The 3<sup>rd</sup> Respondent avers that it is the constitutional organ vested with the full human resource management mandate under Article 246(3) of *the Constitution*. This empowers the Commission to recruit and appoint persons to hold or act in offices within the Service, confirm appointments, determine promotions and transfers, and exercise disciplinary control over such officers.
72. The 3<sup>rd</sup> Respondent avers that there is no provision in *the Constitution* or in any statute conferring upon the 1<sup>st</sup> Respondent payroll management functions. Similarly, the concept of independent command under Article 245(2)(b) does not extend to financial or administrative management of personnel. Payroll management is inherently a human resource function, embedded in systems of budgeting, record keeping and personnel administration all of which fall squarely within the 3<sup>rd</sup> Respondent's human resource oversight. It is the mechanism through which human resource decisions including appointments, confirmations, promotions disciplinary actions and exits from the Service are implemented and reflected. Operational command, on the other hand, is exercised through the issuance of lawful orders, deployment and control of police operations.
73. The 3<sup>rd</sup> Respondent avers that the 1<sup>st</sup> Respondent is not a human resource professional nor is the 2<sup>nd</sup> Respondent structured or trained to perform human resource management functions. The Service's core training and expertise relate to security, law enforcement and the maintenance of public order not to personnel administration, payroll processing, or human resource development. These specialized functions are constitutionally and statutorily reserved for the 3<sup>rd</sup> Respondent whose institutional framework and professional capacity are designed to manage recruitment, career progression, remuneration and discipline in accordance with *the Constitution* and established public service standards.
74. The 3<sup>rd</sup> Respondent asserts that it is incorrect and misleading to suggest that the *Public Finance Management Act, 2012* (PFMA) designates the Inspector-General as an accounting officer or embeds the concept of independent command within the framework of financial accountability. The object of the PFMA is to provide for the effective management of public finances by the national government, to establish oversight responsibility by Parliament and to assign financial responsibilities to government entities and other bodies. This assignment of financial responsibilities is effected strictly through accounting officers who are designated by statute as such. No written law designates or expressly states the 1<sup>st</sup> Respondent as an accounting officer.
75. The 3<sup>rd</sup> Respondent avers that where statute does not designate an accounting officer for a government entity or body, such officers are appointed by the Cabinet Secretary for the National Treasury in



- accordance with the [Public Finance Management Act](#). These appointments are made from among public officers who possess the requisite training and competence in public finance management. The 1<sup>st</sup> Respondent is the operational head of a national security organ and is neither a designated accounting officer under statute nor appointed as such under the PFMA.
76. It is the 3<sup>rd</sup> Respondent's case that designating or appointing the 1<sup>st</sup> Respondent as an accounting officer with responsibilities for budget execution and payroll management would conflict with Section 8(1) of the [National Police Service Act](#), which vests in the 1<sup>st</sup> Respondent leadership responsibilities including overall and independent command over the Service. Such an arrangement would create a conflict of roles in execution, initiation and oversight of public funds of the 2<sup>nd</sup> Respondent.
77. The 3<sup>rd</sup> Respondent avers that there is no nexus between command responsibility, payroll management and fiscal control in [the Constitution](#) or in any statute. Payroll management is a derivative administrative function that relies on verified human resource data relating to recruitment, promotion, deployment and discipline all of which are constitutionally vested in the 3<sup>rd</sup> Respondent under Article 246(3).
78. It contends that funds linked to payroll management have no bearing on the budget and funds linked to policing operations and it is therefore neither logical nor lawful to derive financial control from operational independence, as the two serve distinct purposes: the former ensures command and discipline in police operations, while the latter guarantees accountability and compliance with human resource and public finance frameworks.
79. The 3<sup>rd</sup> Respondent avers that the 1<sup>st</sup> Interested Party is not a National Security Organ but draws membership from both civilian authority and heads of security organs. Similarly, the 3<sup>rd</sup> Respondent, though functionally placed under Chapter Fourteen of [the Constitution](#) on National Security, is not a security organ within the meaning of Article 239(1) but draws membership from both civilian authority and heads of the security organ that is the 2<sup>nd</sup> Respondent.
80. The 3<sup>rd</sup> Respondent avers that its role is a facilitative human resource management organ established to provide civilian oversight and ensure the professional management of personnel matters within the National Police Service. Its placement under Chapter Fourteen was deliberate, intended to align it with the broader national security framework while preserving its constitutional independence as a Commission under Article 248(2)(j) and carving it distinctly from the other employer Commissions in Article 234(3) (c) of [the Constitution](#).
81. The 3<sup>rd</sup> Respondent avers that Article 238(2) (d) cannot be construed as vesting the mandate of recruitment in the 2<sup>nd</sup> Respondent or the 1<sup>st</sup> Respondent. It merely establishes a national value that guides recruitment by whichever body [the Constitution](#) or statute lawfully empowers to undertake that function. In the context of the National Police Service, that body is the 3<sup>rd</sup> Respondent.
82. The 3<sup>rd</sup> Respondent avers that its constitutional mandate expressly includes the power to transfer persons holding or acting in offices within the Service. The term persons holding or acting in offices encompasses all officers uniformed and civilian since each rank is equivalent to a conventional job designation in the public service and constitutes an office tied to specific responsibilities and remuneration. The 3<sup>rd</sup> Respondent therefore lawfully exercises its transfer and deployment powers over all members of the Service, in accordance with [the Constitution](#), the [National Police Service Act](#) and the applicable subsidiary legislation.
83. The 3<sup>rd</sup> Respondent avers that it made the Kenya Gazette Supplement No. 159 of 19<sup>th</sup> September 2025, containing the National Police Service Commission (Recruitment and Appointment) Regulations, 2025, pursuant to Section 28 of the [National Police Service Commission Act](#), which expressly empowers the Commission to make regulations "for the better carrying into effect of any provisions of the



- National Police Service Commission Act*.” In particular, Section 28 authorizes the Commission to make regulations providing for the recruitment of members of the Service. The Regulations were therefore formulated in strict compliance with the *Statutory Instruments Act* and in full adherence to the procedural requirements governing the making of subsidiary legislation.
84. The 3<sup>rd</sup> Respondent avers that in accordance with Section 10(3)(a) of the *National Police Service Commission Act*, the function of making any regulations, rules, code of conduct, or subsidiary legislation under the Act or any other written law is non-delegable. The authority to make regulations is therefore reserved exclusively to the 3<sup>rd</sup> Respondent and cannot be exercised or shared with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  85. It is the 3<sup>rd</sup> Respondent’s case that the Regulations do not in any way interfere with or limit the Inspector- General’s command powers; rather, they provide a structured, transparent, and accountable framework for recruitment and other personnel actions in the Service. This ensures compliance with the principles of fairness, equity, and professionalism within the National Police Service, while complementing the policing mandate vested in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  86. The 3<sup>rd</sup> Respondent avers that the reliance by the Petitioner on Articles 238(2)(d) and 245(2)(b) to challenge the validity of the Regulations is misplaced. Article 238(2)(d) only establishes a principle of diversity to be reflected in recruitment by national security organs, while Article 245(2) (b) guarantees operational independence in policing not human resource control. Neither provision prohibits the 3<sup>rd</sup> Respondent from lawfully making regulations on recruitment pursuant to its enabling statute.
  87. The 3<sup>rd</sup> Respondent avers that the hierarchy of ranks within the Service, as provided under Sections 4(2),22, and the First Schedule to the *National Police Service Act*, sets out the chain of command and levels of seniority for purposes of operational control. It does not create a separate human resource structure independent of the 3<sup>rd</sup> Respondent. The existence of ranks simply organizes command within the Service; it does not remove uniformed officers from the human resource oversight and management functions lawfully vested in the 3<sup>rd</sup> Respondent. Any claim to the contrary is therefore misplaced.
  88. The 3<sup>rd</sup> Respondent avers that the Petitioner’s reading of Section 8A(1) of the *National Police Service Act* as unconstitutional ignores the constitutional intent that discipline of members of the Service is exercised by the 1<sup>st</sup> Respondent subject to the disciplinary control of the 3<sup>rd</sup> Respondent under Article 246(3). The phrase “subject to” does not limit command but ensures due process and accountability consistent with constitutional standards.
  89. It further avers that Sections 10(1)(g) and (ga) of the *National Police Service Act* do not limit the 1<sup>st</sup> Respondent’s independence; they operationalize coordination between command and human resource management. The requirement that the 1<sup>st</sup> Respondent’s recommend deployment above certain ranks merely ensures institutional checks not interference.
  90. It avers that Sections 10(1), 10(4), and 11(eϕ) of the *National Police Service Commission Act* are consistent with its constitutional mandate to provide human resource oversight. Monitoring compliance, reviewing disciplinary actions and receiving reports from the 1<sup>st</sup> Respondent do not amount to giving direction, but rather safeguard transparency and accountability in personnel administration.
  91. The 3<sup>rd</sup> Respondent avers that while Section 10(2) of the *National Police Service Commission Act* allows it to delegate certain recruitment functions to the 1<sup>st</sup> Respondent, such delegation is a normal administrative mechanism intended for the assignment of authority to subordinates or other persons.



However, delegation does not amount to an assignment of responsibility, as this would constitute an abdication of duty or denudation of authority. In this context, delegation serves to operationalize cooperation and enhance efficiency in the implementation of the 3<sup>rd</sup> Respondent's mandate.

92. Under the 3<sup>rd</sup> Respondent's delegated authority, the 1<sup>st</sup> Respondent is only permitted to assist in the implementation of recruitment as an administrative agent. The delegation does not confer power to recruit in its own capacity, since the constitutional authority to appoint and recruit members of the National Police Service rests solely with the 3<sup>rd</sup> Respondent under Article 246(3)(a) of *the Constitution*. Consequently, any recruitment process undertaken by the 1<sup>st</sup> Respondent without or beyond the express delegation and supervision of the 3<sup>rd</sup> Respondent would be unconstitutional, ultra vires, and null and void ab initio, for want of authority.
93. The 3<sup>rd</sup> Respondent avers that Sections 33 and 72 of the *National Police Service Act*, which provide for the 3<sup>rd</sup> Respondent's role in assigning officers to the Directorate of Criminal Investigations and appointing special police officers, respectively, are lawful. These provisions ensure the proper legal appointment of officers through a constitutionally established body, thereby safeguarding the validity of such appointments and preventing arbitrary command decisions.
94. It is the 3<sup>rd</sup> Respondent's case that the advertisement issued by for the recruitment of police constables was firmly grounded in *the Constitution* and statute and issued pursuant to its constitutional mandate under Article 246(3) of *the Constitution*. It was neither an arbitrary act nor a usurpation of the 1<sup>st</sup> Respondent's powers, but a lawful execution of the Commission's duty to ensure that recruitment into the National Police Service is conducted fairly, transparently and in accordance with the principles of equity, accountability, and professionalism envisaged under *the Constitution*. The process was undertaken in consultation with the 1<sup>st</sup> Respondent who, as a member of the Commission, fully participated in the deliberations leading to the advertisement.
95. The 3<sup>rd</sup> Respondent contends that the constitutional and statutory framework governing its mandate including the *National Police Service Commission Act* and the *National Police Service Act* remains valid, lawful and consistent with *the Constitution*. None of the impugned provisions offend Articles 238, 239, 244, 245, 246, or any other provision of *the Constitution* when read purposively and harmoniously.

#### **4<sup>th</sup> Respondent and 1<sup>st</sup> Interested Party's Case**

96. The 4<sup>th</sup> Respondent and 1<sup>st</sup> Interested Party filed their grounds in support of the petition on the following grounds:
  1. That the 1<sup>st</sup> Respondent, the Inspector General of Police, is a constitutional office established under Article 245(1)(a) of *the Constitution*, mandated to exercise independent command over the National Police Service, the 2<sup>nd</sup> Respondent herein.
  2. That Article 245(4)(c) of *the Constitution* expressly provides that no person may give direction to the Inspector General with respect to the employment, assignment, promotion, suspension, or dismissal of any member of the National Police Service, thereby insulating the Inspector General from any external interference in the exercise of his command.
  3. That the independence of the Inspector General is not a matter of administrative convenience but a constitutional safeguard designed to guarantee discipline, efficiency, and professionalism in the National Police Service as a national security organ.



4. That by virtue of Article 239(1)(c) of *the Constitution*, the National Police Service is a national security organ, and its command structure must therefore reflect the constitutional imperative of unity and hierarchy of command.
5. That the 1<sup>st</sup> Respondent, as a member of the National Security Council under Article 240(3) of *the Constitution*, operates within the broader national security framework, and it could never have been the intention of the framers of *the Constitution* to subject a national security organ to the control or command of a civilian commission.
6. That *the Constitution* creates two cadres of staff in the National Police Service being; members of service; and persons who hold or act in offices in the Service.
7. That the recruitment of police constables is a matter of command and operational control within the meaning of Article 245(4)(c) and therefore falls squarely within the constitutional mandate of the Inspector General and not the 3<sup>rd</sup> Respondent, the National Police Service Commission.
8. That *the Constitution* clearly distinguishes between members of the Service and persons who hold or act in offices in the Service, with the former category being under the exclusive authority of the Inspector General, while the latter category falls under the purview of the National Police Service Commission under Article 246(3).
9. That the power granted to the 3<sup>rd</sup> Respondent under Article 246(3) is confined to recruiting and appointing persons to hold or act in offices in the Service, confirming appointments, and determining promotions and transfers, and does not extend to the recruitment of members of the Service such as police constables.
10. That the recruitment of constables is an integral component of maintaining the discipline, operational readiness, and effectiveness of the Service and is inseparable from the Inspector General's constitutional function of independent command.
11. That the 2<sup>nd</sup> Respondent is under a higher degree of control, obedience, and professionalism, to ensure efficient and effective action, especially in high-risk security situations. *The Constitution* acknowledges this at Article 24(5) of *the Constitution* where it limits certain Human Rights and Fundamental Freedoms for Members of the Service including labour relations under Article 41 of *the Constitution*. Hence the responsibility of ensuring the Service is managed as a disciplined Service is exclusively vested on the 1<sup>st</sup> Respondent pursuant to Article 245 of *the Constitution*.
12. That the unity of command within the National Police Service is essential to maintain accountability, effectiveness, and national security coherence, and this unity would be gravely undermined if recruitment and employment powers were dispersed between multiple organs.
13. That the Kenya Gazette Supplement No. 159 of 19<sup>th</sup> September 2025, titled "The National Police Service Commission (Recruitment and Appointment) Regulations, 2025, to the extent that it purports to empower the 3<sup>rd</sup> Respondent to recruit members of the Service, is inconsistent with the provisions of Articles 238(2)(d), 245(4)(c) and 246(3) of *the Constitution* and is therefore null and void by operation of Article 2(4) of *the Constitution*.
14. That any law, regulation, or administrative act that purports to expand or confer upon the 3<sup>rd</sup> Respondent the authority to recruit members of the Service is unconstitutional, as derogates from the Inspector General's independence guaranteed under Article 245(4)(c).



15. That the Court is therefore invited to adopt a purposive and holistic interpretation of Articles 238, 239, 244, 245, and 246 of *the Constitution* to preserve the functional independence of the Inspector General and the integrity of the National Police Service as a disciplined national security organ.
16. That the Petition herein raises substantial constitutional questions regarding the proper delineation of powers between the Inspector General and the National Police Service Commission, and the Attorney General supports the Petition in so far as it seeks to affirm the supremacy of Article 245(4)(c) in relation to recruitment of members of the Service.
17. That the Attorney General fully associates with and adopts the factual depositions contained in the Replying Affidavit of the 1<sup>st</sup> Respondent, to the extent that they demonstrate that the 3<sup>rd</sup> Respondent's attempt to assume recruitment functions violates the letter and spirit of *the Constitution*.
18. That it is in the public interest, and in the interest of constitutional order, that the recruitment, discipline, and command of members of the National Police Service remain within the exclusive operational control of the Inspector General, as envisaged under Article 245 of *the Constitution*.
19. That in view of the foregoing, this Honourable Court ought to allow the Petition and make appropriate declarations affirming that the power to recruit constables and other members of the Service vests exclusively in the Inspector General of Police.

## **2<sup>nd</sup> Interested Party's Case**

97. The 2<sup>nd</sup> Interested Party filed its replying affidavit dated 8<sup>th</sup> October 2025, sworn by its Chief Executive Officer, Elema Halake.
98. The 2<sup>nd</sup> Interested Party avers that this Court lacks jurisdiction to hear and determine the petition and that the Petitioner lacks locus standi to bring the current suit before this Court, thus the matter ought to be dismissed.
99. It avers that the mandate to recruit and appoint personnel within the 2<sup>nd</sup> Respondent, confirm appointments, and determine promotions and transfers within the National Police Service as well as exercise disciplinary control over such personnel, be it members of the service or civilians employed within the service was strictly reserved as a function of the 3<sup>rd</sup> Respondent.
100. The 2<sup>nd</sup> Interested Party avers that there is no express provision in *the Constitution* distinguishing between members of the Service and persons who hold or act in offices within the Service. Section 2(1) of the *National Police Service Act* clearly defined a member of the service to include "civilian members of staff of the Service.
101. The 2<sup>nd</sup> Interested Party avers that this Court, differently constituted, has previously drawn distinction between transfers (a mandate of the 3<sup>rd</sup> Respondent) and deployment (a function of the 1<sup>st</sup> respondent) of members of the 2<sup>nd</sup> Respondent by declaring that transfers of members of the Service is the mandate of the commission while the 1<sup>st</sup> Respondent only does deployments which are meant to be temporary.
102. It avers that management of the payroll is a function that ordinarily falls within the Human resource function and consequently proper for execution by the 3<sup>rd</sup> Respondent with regard to all officers serving within the 2<sup>nd</sup> Respondent.



103. It is the 2<sup>nd</sup> Interested Party's case that the question on who has the mandate to perform human resource function, including inter alia recruiting, transfers, disciplinary control within the 2<sup>nd</sup> Respondent has since been clarified by both the High Court and the Court of Appeal whereby the courts have held that this is a function of the 3<sup>rd</sup> Respondent.
104. The 2<sup>nd</sup> Interested Party avers that Article 246 is clear that the four Commissioners of the 3<sup>rd</sup> Respondent who are civilians are persons of high integrity. Thus, the Petitioner's allegation that these members may occasion unnecessary civilian intrusion of the Service or having the 3<sup>rd</sup> Respondent handle the human resource function of NATIONAL POLICE SERVICE would occasion delay in execution of payroll as well as delay in recruitment is to invite this court to engage in an academic exercise where no facts have been presented of concretized risk of such intrusion or alleged delays.
105. The 2<sup>nd</sup> Interested Party avers that its establishment is grounded on Article 239(5) of *the Constitution* which provides for civilian oversight of the security organs in the country including the National Police Service and further under Article 244 of *the Constitution*. Moreover, creation of such civilian bodies such as the 3<sup>rd</sup> Respondent and itself is to hold the 1<sup>st</sup> and 2<sup>nd</sup> Respondent accountable has been informed by the history of policing and police service in Kenya.
106. It was stated that the 3<sup>rd</sup> Respondent and the 2<sup>nd</sup> Interested Party were created as part of the legal and policy agenda for transformation of the Police into an efficient and accountable Service, capable of providing and ensuring security for all Kenyans while observing the highest standards of professionalism, accountability and respect for the constitutionally guaranteed fundamental freedoms and rights for all.
107. The 2<sup>nd</sup> Interested Party avers that the assertion that only the National Security Council has supervisory mandate over the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and can hold them accountable in performance of their constitutional mandate is a misrepresentation of law and fact. The law and the wish of Kenyans as demonstrated by the history of policing envisaged different bodies to hold the police accountable with regard to different aspects concerning the Service, including aspects of investigations into police misconduct and conduct of disciplinary proceedings thereto, fairness in police recruitments and transfer, etc.
108. It is the 2<sup>nd</sup> Interested Party's case that the two Deputy Inspector Generals of the Police as well as other two retired officers are also members of the 3<sup>rd</sup> Respondent, therefore, there have ample room to advice the commission on the competence of persons to be recruited in the service.

### **Petitioner's Submissions**

109. The Petitioner submitted that dispute for determination before the Court therefore concerns issues of employment, to wit, recruitment, training, employment, assignment, promotion, suspension and dismissal, including payroll management and human resource records of employees (members of the service, who are part of the disciplined force). These issues are purely employment and labour relation matters, in respect of which the Employment and Labour Relations Court has jurisdiction; reliance was placed in Supreme Court Petition No. 004 of 2023 as consolidated with Petition No. e002 of 2023 Kenya Tea Growers Association & 2 Others -vs- The National Social Security Fund Board of Trustees & 13 others.
110. It is the Petitioner's submission that the 3<sup>rd</sup> Respondent despite its objection to jurisdiction admits that the Court has jurisdiction in relation to Article 246 of *the Constitution*. However, Article 232(2) (d) (principles of recruitment by National Security organ), Article 244 (training and professionalism of members of the service) and 245 (2)(b) and (4) (independent command of the 1<sup>st</sup> Respondent and



no direction on employment, assignment, promotion, suspension and dismissal of members of the service) are also employment issues. Therefore, the petition raises purely employment disputes, it falls under the exclusive original jurisdiction of this Court as per Article 162(2)(a) and Section 12 of the *Employment and Labour Relations Court Act*.

111. The Petitioner submitted on two issues: whether *the Constitution* creates a distinction between “members of the service” and “persons holding or acting in offices in the service” and whether the independent command of the Inspector General of the National Police power includes the power to recruit, train, employ, assign, promote, suspend and dismiss members of the service or whether the same is vested in the National Police Service Commission.
112. On the first issue, the Petitioner submitted that *the Constitution* creates two centres of power: “members of the service” in respect of whom no person may direct the Inspector General on their employment, assignment, promotion, suspension and dismissal and “persons holding or acting in the offices in the service, in respect of whom the National Police Service Commission has powers in respect of recruitment, appointment, and disciplinary control. If *the Constitution* intended these to be same, they would be no need for the distinction, and further no need to state categorically that “but no person may give a direction to the Inspector-General with respect to-(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.”
113. The Petitioner cited International Centre For Policy and Conflict v Attorney General & 2 others [2014] KEHC 7521 (KLR); the court held:

“It is noteworthy that whereas the Inspector General was vested with the powers of appointment of any members of the police service, the powers to appoint a person to hold offices in the Service was reserved for the Commission. Clearly, the drafters of *the Constitution* sought to distinguish between members of the Service and Offices of the Service hence the demarcation in their source of appointments.”
114. On the second issue, the Petitioner submitted that recruitment under Article 238 (2) (d) is exclusive to the National Security Organs. This provision decrees and mandates that recruitment of members of a National Security Organ is by that organ itself, and no other body, organ or entity. The 3<sup>rd</sup> Respondent is not a national security organ under Article 239 of *the Constitution*, thus, it cannot purport to recruit for a national security organ, as *the Constitution* mandates that the recruitment is ‘by the national security organ, not ‘for’ the national security organ.
115. It is the Petitioner’s submissions that *the Constitution* mandates the 2<sup>nd</sup> Respondent itself to “Strive for the highest standards of professionalism and discipline among its members, therefore, the functions under Article 244(a) are limited to its members, and not to persons holding or acting in offices in the service. The 3<sup>rd</sup> Respondent has no power, mandate or duty to train the members of the national police service even under Article 246 of *the Constitution*.
116. The Petitioner submitted that based on its mandate under Article 246(3) and (4), the 3<sup>rd</sup> Respondent serves as a civilian oversight body responsible for the administrative framework of the service, primarily by handling policy of recruiting civilian support staff. Since these recruits such as accountants, secretaries, and technicians are already trained civilians who bring their qualifications from other institutions, the Commission does not have the authority to conduct training. Instead, it employs them directly into civilian roles where they hold offices or in an acting capacity, distinguishing them from uniformed members of the service, who hold ranks and begin their employment as constables.



117. The Petitioner submitted that under Article 245(4)(c) of *the Constitution*, grants the 1<sup>st</sup> Respondent independence on personnel matters as it states that no person may give direction to the Inspector General on the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
118. The Petitioner submitted that this authority is absolute and independent, as the 1<sup>st</sup> Respondent is also a member of the National Security Council (Article 240(1). Section 51 of the *National Police Service Act* aligns with this by requiring officers to obey lawful orders from superiors, but ultimate HR decisions rest with the IG. Additionally, the ranking structure in the First Schedule of the *National Police Service Act* (from Inspector- General down to Constable) emphasizes ranks, not offices, underscoring a hierarchical, merit-based system managed internally by the 1<sup>st</sup> Respondent.
119. The Petitioners submitted that is not in dispute that Articles 238 (2)(d), 239(1), 244(a) &(d) and 245(2)(b) and(4)(c) of *the Constitution* creates a constitutional continuum from recruitment, training, employment, maintaining discipline and professional standards, assignment, promotion, suspension and dismissal of the members of the service. This continuum is constitutionally integrated and indivisible. *The Constitution* does not contemplate, authorize, or permit one entity to recruit, another to train, and a third to employ. The entire process must be conducted by the National Police Service under the independent command of the Inspector-General.
120. It is the Petitioner's submissions that the 1<sup>st</sup> Respondent as the operational commander, exercises exclusive, independent, and non-directable authority over the internal employment management of police officers (employment, assignment, promotion, suspension, dismissal) to ensure the chain of command and operational efficacy of a national security organ.
121. The Petitioner submitted that for national security to be safeguarded in compliance with Articles 239(2), 238(2)(d), 244(d) and 245(4)(c) of *the Constitution*, the independent command entailing recruitment, training, employment, assignment, promotion, suspension and dismissal of members of the service, including the related payroll services must remain within the secure confines of the National Police Service, under the custody of the Inspector-General, who is directly accountable to the National Security Council for its integrity and secrecy.
122. It was submitted that vesting recruitment, training, assignment, deployment, discipline and removal of the members of the service, including their payroll with the 3<sup>rd</sup> Respondent would fragment command, contravening Article 245(2)(b)'s unified structure of independent command of the Inspector General of the members of the service. It could occasion delay in recruitment, improper training, delay in employment, assignment and deployment and payments, as evidenced by past public sector payroll disruptions which would undermine national security and the independent command as decreed under article 238(2)(d), 239(1), 244(a) &(d), 245(2)(b) & (4) of *the Constitution*.
123. The Petitioner submitted that *Public Finance Management Act* creates a comprehensive framework for financial accountability that reinforces the 1<sup>st</sup> Respondent's independent command, entailing recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, all which animate financial implications. As the designated accounting officer for the National Police Service, the 1<sup>st</sup> Respondent bears personal responsibility for all financial management functions, including budget execution, expenditure control, and fiscal discipline. Article 226(2) of *the Constitution* requires that "the accounting officer of a national public entity is accountable to the National Assembly for its financial management."
124. The Petitioner submitted that in the personal liability aspect of accounting officer responsibilities further supports IG independent command including recruitment, training, employment,



assignment, promotion, suspension and dismissal of the members of the service and payroll management and authority. Under the PFMA, accounting officers face potential criminal sanctions for financial mismanagement, creating strong incentives for direct control over major financial systems. Delegating recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service and payroll management and authority to entities outside the command structure would create accountability without authority, violating fundamental principles of public administration and potentially exposing the 1<sup>st</sup> Respondent to legal liability for decisions beyond his control.

125. The Petitioner placed reliance in *Okiya Omtatah Okioti v Cabinet Secretary, Interior and Coordination of National Government & another* [2021] KEHC 1440 (KLR) wherein the court held:

“The Independent command, further entails commanding the various sub components of command and control in a disciplined service. These include personnel matters and recruitment, training, deployment, transfer, promotions, performance, discipline and accountability. It also includes arrangement of instruments of command (ranks) in a hierarchical manner, transfer of services intra and extra services and other Government institutions, determination of strength of service, formations and specialized units, financial resources and police equipment and other assets. It should therefore be appreciated that the Independent command is so important and goes to the core of the powers conferred by *the Constitution* upon the Inspector General of the National Police Service and I find that this Court should resist the Petitioner’s invite into issuing the said orders as it would amount to this Court’s interference with the independent command of the Inspector General of the National Police Service and which would be contrary to clear constitutional provisions.”

126. The Petitioner submitted that the case of *Okiya Omtatah Okioti v Cabinet Secretary, Interior and Coordination of National Government & another* [supra] KEHC 1440 (KLR) exemplifies the doctrine of constitutional exclusivity; it is a cardinal principle of constitutional law that safeguards the separation of powers, protects constitutional design, and ensures that State organs exercise only those powers expressly or impliedly conferred upon them by *the Constitution*.

127. The Petitioner submitted that the 3<sup>rd</sup> Respondent’s National Police Service Commission (Recruitment and Appointment) Regulations, 2025 which provide for the recruitment of the members of the National Police Service on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is clearly in violation of Articles 238(2) (d), 239(1), 244(a) & (d), 245(2)(b) and (4)c) of *the Constitution*, as no person may give direction to the Inspector General in respect to the employment, assignment, promotion, suspension or dismissal of any member of the 2<sup>nd</sup> Respondent.

128. The Petitioner submitted that having established that the Inspector General of the National Police Service has independent command which entails recruitment, training, deployment, transfer, promotions, performance, discipline and accountability in respect of the members of the service under Articles 238(2)(d), 239(1), 244(a) & (d), 245(2)(b) and (4)c) of *the Constitution*, the Section 2(1), 4(1), 81(1) 10(1)(g)(ga), 33,72(1)(2)& (3) of the *National Police Service Act* and Sections 10(1)(a)(c)(k) (4) (c)(e)(f)(g) and 11(e) provisions of the law are inconsistent with *the Constitution*, and therefore void under Article 2 of *the Constitution*.

129. The Petitioner submitted that the definition of members of the service under Section 2(1) of the *National Police Service Act* is therefore unconstitutional to the extent that it member of the Service” includes civilian members of staff of the Service, when *the Constitution* clearly delineates between “members of the service” in respect of whom the Inspector General has independent command,



- including on all personnel matters and “persons holding or acting in offices in the service, in respect of which the National Police Service Commission has control of personnel matters.
130. The Petitioner submitted that Section 4(1) of the [National Police Service Act](#) is unconstitutional to the extent that it purports to extend the remit of the 3<sup>rd</sup> Respondent to the members of the service, including determining the maximum members of the service, in respect of which the Inspector General has independent command.
  131. It is the Petitioner’s submission that the purport to subject the independent command of the members of the service under the Inspector General, including matters of professionalism and discipline of the members of the service (under article 244(a) and suspension and dismissal of members of service (under Article 245(4)(c) of [the Constitution](#)), subject to disciplinary control of the Commission under Section 8A (1) of the [National Police Service Act](#) is unconstitutional and void.
  132. The Petitioner submitted that Sections 10(1)(g) & (ga) of the [National Police Service Act](#) are void to the extent that they limit the independent command of the Inspector General in terms of deployment and distribution of the members of the service, and to the extent that they usurp the powers of the National Security Council and Parliament under Article 240(3) & (8) of [the Constitution](#), which is the only entity that can supervise the 2<sup>nd</sup> Respondent on matters of national security and deployment of forces.
  133. The Petitioner submitted that Section 33 of the [National Police Service Act](#) is unconstitutional to the extent that it purports to divest the Inspector General of his independent command and power to assign members of the service to the Directorate, and to vest the same on the National Police Service Commission, which only is mandated to appoint, recruit and transfer persons holding or acting in offices in the service, and not members of the service.
  134. It is the Petitioner’s submission that Section 72 of the [National Police Service Act](#) contravenes Article 247 of [the Constitution](#) as the Commission has no role to play in any establishment or appointment of member of the service, since [the Constitution](#) is clear that even where a special police service is established, the supervision remains under the National Police Service, and under the Command of the Inspector General of the National Police Service.
  135. The Petitioner submitted that Sections 10(1)(a)(c) &(k); 10 (4)(c)(d)(e)(f) &(g) and 11(e) of the [National Police Service Commission Act](#) contravene Article 245(2)(b) and (4)(c) of [the Constitution](#), which provides that the Inspector General shall exercise independent command over the National Police Service and that no person may give direction to the Inspector General on the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service. The Commission only has mandate over persons holding or acting in offices in the service, and not on the members of service, and the purport to extend the powers of the Commission to the members of service. These sections undermine the 1<sup>st</sup> Respondent’s independent command given under Article 245(4)(c).
  136. It is the Petitioner’s submission that any Act of Parliament, regulation, or action that contravenes the provisions of [the Constitution](#), is invalid, null and void ab initio, as mandated by Article 2(1) and (4), which establish [the Constitution](#) as the supreme law binding all persons and state organs without exception. Any legislative provision, including those purportedly enacted to govern the National Police Service or the National Police Service Commission, that deviates from, compromises, or undermines the explicit constitutional mandates under Articles 238, 239, 244, and 245, particularly the exclusive authority of the Inspector-General over the employment, assignment, promotion, suspension, or



dismissal of National Police Service members under Article 245(4)(c) is unconstitutional and of no legal effect.

### **1<sup>st</sup> Respondent's Submissions**

137. The 1<sup>st</sup> Respondent submitted on three issues; whether this Honourable Court has jurisdiction to hear and determine this Petition; whether the 1<sup>st</sup> Respondent is vested with Constitutional mandate to employ members of the service of the 2<sup>nd</sup> Respondent; and whether this Honourable Court has jurisdiction to hear and determine this Petition.
138. On the first issue, the 1<sup>st</sup> Respondent submitted that this Court is of the same status of the High Court and as such, it has the ability to interpret and apply *the constitution* in disputes relating to employment and labour relations.
139. The 1<sup>st</sup> Respondent submitted that *the Constitution* expressly protects its independence on matters of employment, assignment, promotion, suspension or dismissal of any member of the National Police Service so as to enable it to exercise independent command over the 2<sup>nd</sup> Respondent as required by Article 245(2)(b) of *the Constitution*.
140. It further submitted that the 3<sup>rd</sup> Respondent herein on the other hand is established under Article 246(1) of *the Constitution* and its mandate is set out under Article 246(3) of *the Constitution*, which provides that, the Commission shall recruit and appoint persons to hold or act in offices in the Service, confirm appointments, and determine promotions and transfers within the National Police Service.
141. It is the 1<sup>st</sup> Respondent's submission that *the Constitution* under Article 245(2)(b) and Article 246(3) purposely creates and distinguishes two cadres of staff in the National Police Service; "members of the Service" and "persons to hold or act in offices in the Service."
142. The 1<sup>st</sup> Respondent submitted that Article 245(4)(c) of *the Constitution* it is mandated to employ, assign, promote, suspend or dismiss members of the National Police Service, which mandate is not subject to control and/or direction of any person or organ whereas, the 3<sup>rd</sup> Respondent is mandated under Article 246(3) of *the Constitution* to recruit and appoint persons to hold or act in offices in the Service.
143. The 1<sup>st</sup> Respondent submitted that Article 238(2)(d) of *the Constitution* requires that all recruitment should be done by the National Security Organ itself. This is so because *the Constitution* under Article 238(2)(d) of *the Constitution* mandatorily requires that recruitment by the national security organs must reflect the diversity of the Kenyan people in equitable proportions. This responsibility to ensure that the foregoing constitutional principle and directive has not been placed upon the 3<sup>rd</sup> Respondent.
144. It was submitted that it is only the 2<sup>nd</sup> Respondent by employing for itself as required by Article 238(2)(d) of *the Constitution* that it can meet and/or fulfil the constitutional principle of diversity of the Kenyan people and ensure equity in the recruitment. The 3<sup>rd</sup> Respondent is not a National Security Organ and therefore it does not have the powers to recruit for or on behalf of the 2<sup>nd</sup> Respondent, which is a National Security Organ.
145. It is the 1<sup>st</sup> Respondent's submission that when this Court interprets the competing provisions of Article 238(2)(d), Article 245(4)(c) and Article 246(3) of *the Constitution* holistically without any provision destroying the other; the outcome is that the 1<sup>st</sup> Respondent is vested with mandate to recruit and/or employ members of the service and the 3<sup>rd</sup> Respondent employs and/or recruits persons holding offices in the service.



### 3<sup>rd</sup> Respondent's Submissions

146. The 3<sup>rd</sup> Respondent submitted on six issues: whether this Honourable Court has the jurisdiction to hear and determine the Petition and the Notice of Motion Application dated 30<sup>th</sup> September 2025; whether *the Constitution* contemplates a dual employment structure within the National Police Service, creating separate categories of employees or employers; whether Article 245 (4)(c) of *the Constitution* confers the Inspector General human resource powers and mandate of uniformed members of the Service; whether Article 238(2)(d) of *the Constitution* vests National Security Organs with recruitment mandates; and whether the 3<sup>rd</sup> Respondent is constitutionally and statutorily empowered to make regulations governing the recruitment of uniformed members of the National Police Service.
147. On the first issue, the 3<sup>rd</sup> Respondent submitted that the Petition does not present an employment or labour relations dispute within the meaning of Section 12 of the *Employment and Labour Relations Court Act*. It instead raises constitutional questions concerning the interpretation of Articles 238, 239, and 240 matters relating to national security, the National Security Council, and the independent command of the Inspector-General. These are subjects constitutionally reserved for determination by the High Court under Article 165(3)(d)(i), thus, this Court lacks jurisdiction to hear and determine the Petition.
148. On the second issue, the 3<sup>rd</sup> Respondent submitted that its constitutional mandate under Article 246(3) of *the Constitution* was designed to safeguard the integrity of human resource management across the entire Service, ensuring that all persons serving under the National Police Service whether uniformed or civilian are treated uniformly, fairly, and independently of political or external influence.
149. It submitted that *the Constitution* does not draw, imply, or create any distinction in employment authority between uniformed and civilian members serving within the same institution. Article 246(3) of *the Constitution* makes no such differentiation, and neither the *National Police Service Act* nor the *National Police Service Commission Act* establishes a separate employment regime. The 3<sup>rd</sup> Respondent is solely responsible for all personnel matters across the Service, consistent with Articles 10 and 232 of *the Constitution*, which emphasize equality, fairness, and merit in public service.
150. It is the 3<sup>rd</sup> Respondent's submission that Article 234(3) of *the Constitution* explicitly excludes the National Police Service from the jurisdiction of the Public Service Commission, recognizing the National Police Service Commission as an independent employer commission. It follows that there are only five constitutionally recognized employer commissions in Kenya, thus, the notion that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents could serve as alternative employers would amount to the creation of a sixth employing entity not contemplated by *the Constitution*, rendering such a structure unconstitutional, irregular, and without legal foundation.
151. The 3<sup>rd</sup> Respondent submitted that it is represented at the Salaries and Remuneration Commission, while neither the National Police Service nor the Inspector-General enjoys such representation. If *the Constitution* had contemplated a dual employment regime, both entities would necessarily have separate representation at the Salaries and Remuneration Commission. The absence of such representation conclusively affirms that the 3<sup>rd</sup> Respondent is the sole constitutional body mandated to represent and manage all matters of remuneration and human resource policy within the National Police Service.
152. The 3<sup>rd</sup> Respondent placed reliance in *International Centre For Policy and Conflict v Attorney General & 2 others* [2014] KEHC 7521 (KLR) and submitted that a holistic reading of the judgment reveals that it does not, in any manner, limit the powers of the 3<sup>rd</sup> Respondent to a certain category of



employees as portrayed by the Petitioner. On the contrary, it unequivocally affirms the Commission's exclusive constitutional mandate overall employment and human resource functions within the National Police Service, thereby reinforcing the unitary employment structure envisaged under Article 246(3) of *the Constitution*.

153. It is the 3<sup>rd</sup> Respondent's submission that *the Constitution* establishes a single employment structure and organ within the National Police Service, the Inspector-General exercises independent operational command under Article 245, and the National Police Service Commission manages all personnel functions under Article 246. These roles are distinct yet complementary, ensuring both professional independence and institutional accountability.
154. On the third issue, the 3<sup>rd</sup> Respondent submitted that Article 245(4)(c) of *the Constitution* neither confers nor implies any human-resource mandate upon the Inspector-General. The provision operates solely as a constitutional safeguard to preserve the operational autonomy of the police command from political or external interference. It cited the Supreme Court in *Attorney-General & 2 others v Ndi & 79 others; Dixon & 7 others (Amicus Curiae)* [2022] KESC 8 (KLR) in which it cautioned against the expansion of institutional powers beyond those conferred by law by stating:
- “Courts should not encourage extension of powers by constitutional or statutory bodies. Such bodies must operate strictly within the four corners of their constitutional and statutory mandate. Where no power-conferring legal provision exists to support a claimed mandate, courts should not use interpretive craft to expand the authority of a public body.”
155. It is the 3<sup>rd</sup> Respondent's submission that human-resource decisions are not meant to be “commands” but must reflect fairness, dignity, and merit. It was therefore necessary to remove personnel administration from the Inspector-General's command and vest it in a professional, civilian-led body the National Police Service Commission to humanize the management of police officers, institutionalize accountability, and align policing with the values of Article 10 and 232 of *the Constitution*.
156. The 3<sup>rd</sup> Respondent submitted that Article 245(4)(c) does not confer human-resource powers upon the Inspector-General or the National Police Service. The provision is prohibitory in nature and serves only to preserve operational autonomy. The exclusive authority to recruit, appoint, promote, transfer, and exercise disciplinary control over all members of the Service remains constitutionally vested in the 3<sup>rd</sup> Respondent under Article 246(3) of *the Constitution*.
157. On the fourth issue, the 3<sup>rd</sup> Respondent submitted that Article 238(2)(d) does not create, transfer, or imply any human-resource mandate to the national security organs. The provision is constitutional in principle, not operational in function. It sets out a national value that recruitment into national security organs shall reflect the diversity of the Kenyan people in equitable proportions but it does not designate who is to carry out that recruitment. The implementation of this value is left to bodies expressly empowered elsewhere in *the Constitution* and statute, such as the 3<sup>rd</sup> Respondent under Article 246(3).
158. The 3<sup>rd</sup> Respondent submitted that Article 246(3) explicitly assigns to the National Police Service Commission the powers to recruit, appoint, promote, transfer, and exercise disciplinary control over members of the Service. The deliberate inclusion of these powers in Article 246(3) and their omission from Article 238(2)(d) or Article 239 signifies the framers' conscious intent to reserve human-resource functions exclusively to the 3<sup>rd</sup> Respondent.



159. The 3<sup>rd</sup> Respondent submitted that the structure of Chapter Fourteen confirms this deliberate separation. The Kenya Defence Forces, one of the national security organs, does not recruit itself; Article 241(5) establishes the Defence Council and section 28(1) of the *Kenya Defence Forces Act* provides that “the Defence Council shall recruit and appoint members of the Defence Forces.” The Council although not a national security organ under Article 239(1) is entrusted with personnel management for the Forces. This demonstrates that *the Constitution* envisages civilian as facilitative bodies to manage human-resource functions for security institutions. The same constitutional logic applies to the National Police Service, it is the lawful organ through which professionalism, meritocracy, and transparency are injected into personnel management. Its authority arises from Article 246(3), and its oversight ensures that recruitment is based on competence and equity rather than command or political discretion.
160. It is the 3<sup>rd</sup> Respondent’s submission that Article 238(2)(d) serves as a normative compass, not a source of authority. It guides recruitment by the 3<sup>rd</sup> Respondent to ensure diversity and equity, but it does not confer any direct or implied power on the National Police Service or the Inspector-General to recruit. Human-resource functions remain the exclusive constitutional preserve of the 3<sup>rd</sup> Respondent under Article 246(3). Any contrary interpretation would offend the principles of legality, accountability, and civilian oversight enshrined in *the Constitution*, undermine the reform spirit of Chapter Fourteen, and erode the very professionalism the framers sought to institutionalize within the National Police Service.
161. On the fifth issue, the 3<sup>rd</sup> Respondent submitted that pursuant to Article 246(3) of *the Constitution* read with Section 28 of the *National Police Service Commission Act*, it is constitutionally and statutorily empowered to make regulations governing the recruitment of uniformed members of the National Police Service.
162. The 3<sup>rd</sup> Respondent submitted that in exercise of this authority, it lawfully enacted the National Police Service Commission (Recruitment and Appointment) Regulations, 2025, in full compliance with the *Statutory Instruments Act*, 2013. The Commission undertook extensive public participation through countywide stakeholder consultations held on 11<sup>th</sup> August 2025, before publishing the Regulations in the Kenya Gazette Supplement No. 159 of 19<sup>th</sup> September 2025. Upon gazette, it duly submitted the Regulations to the National Assembly accompanied by an Explanatory Memorandum detailing the extent of compliance with the *Statutory Instruments Act*, including the evidence of public participation, regulatory impact assessment, and conformity with *the Constitution* and parent statute.
163. The 3<sup>rd</sup> Respondent submitted that the purpose of these Regulations is to operationalize the Commission’s constitutional duty under Article 246(3)(a) to recruit persons into the Service in a transparent, objective, and merit-based manner consistent with the national values in Articles 10, 27, and 232 of *the Constitution*. Far from usurping the role of the Inspector-General, the Regulations provide a structured, accountable, and depoliticized process for recruitment precisely the reform objective envisioned by the Ransley and Waki (CIPEV) Reports that led to the creation of the Commission.
164. The 3<sup>rd</sup> Respondent submitted that the High Court in *International Centre for Policy and Conflict v Attorney General & 2 Others* [supra] was categorical that “the Inspector-General of Police has no unilateral powers to recruit and appoint persons to hold or act in offices in the Service.” Consequently, the Commission’s power to make recruitment regulations is neither implied nor assumed; it is expressly conferred by both *the Constitution* and statute, exercised within the law, and subject to parliamentary oversight in accordance with the *Statutory Instruments Act*. The impugned Regulations, therefore, represent the lawful execution of its constitutional mandate rather than an overreach of power.



165. It is the 3<sup>rd</sup> Respondent's submission that it is the only constitutionally and statutorily recognised body with the authority to make regulations governing the recruitment of uniformed members of the National Police Service, and that its actions in enacting the 2025 Regulations were firmly within its jurisdiction, consistent with due process, and fully aligned with the spirit and letter of *the Constitution*.
166. On the final issue, it is the 3<sup>rd</sup> Respondent's submission that the Petitioners' challenge is grounded in a misinterpretation of Articles 238, 239, 244 and 245 of *the Constitution* as they contend that the provisions collectively vest the Inspector-General (IG) with complete human resource powers including recruitment, training, promotion, and dismissal over members of the National Police Service.
167. The 3<sup>rd</sup> Respondent submitted that the 1<sup>st</sup> Respondent's independence under Article 245(2) (b) pertains to operational matters command, deployment, and law enforcement not personnel administration. That command is insulated from interference through Article 245(4)(c), which provides that no person may give a direction to the Inspector-General with respect to the employment, assignment, promotion, suspension or dismissal of any member of the Service.
168. It is the 3<sup>rd</sup> Respondent's submission that the language of Article 245(4)(c) is negative, hence protective rather than constitutive. It restrains external interference but does not confer employment authority upon the Inspector-General. A negative clause, by its nature, deters intrusion; it does not create new powers.
169. The 3<sup>rd</sup> Respondent submitted that the Petitioners' reading of Section 2 of the *National Police Service Act* ignores that *the Constitution* envisages a unified Service with both uniformed and civilian personnel. The Commission's human resource jurisdiction extends to all who serve within the Service establishment, regardless of designation. This definition is therefore valid and necessary to avoid administrative ambiguity.
170. The 3<sup>rd</sup> Respondent submitted that establishment planning is a strategic and budgetary function, not an operational one. The Inspector General, as a member of both the National Security Council and the 3<sup>rd</sup> Respondent, participates in this process. Section 4(1) thus ensures institutional coordination rather than interference and does not contravene Article 245(4)(c).
171. The 3<sup>rd</sup> Respondent submitted that the Petitioners' contention that Section 8A(1) of the *National Police Service Act* undermines independent command ignores the constitutional structure of discipline. Article 246(3)(b) vests the Commission with disciplinary control, while Article 245(2)(b) vests the IG with operational command. Therefore, Section 8A(1) reconciles these provisions by clarifying that the Inspector General's command covers day-to-day discipline, whereas ultimate disciplinary control including removal or confirmation of sanctions rests with the Commission. This is not subordination but lawful oversight ensuring due process and uniform standards of justice within the Service.
172. It was submitted that Sections 10(1)(g) and (ga) introduce an internal check ensuring that deployment decisions of strategic significance are reviewed for legality, merit, and gender balance under Article 232. They thus preserve the constitutional separation of powers and prevent arbitrary transfers, without fettering the Inspector General's day-to-day command.
173. It was submitted that Section 33 provides that officers shall be drawn from the Service upon recommendation of the Directorate and appointment by the 3<sup>rd</sup> Respondent. This aligns with Article 246(3)(a), which vests appointment powers in the 3<sup>rd</sup> Respondent. Once officers are appointed or transferred, they fall under the Inspector General's operational command under Article 245(2)(b).



- The section therefore maintains clear constitutional sequencing appointment by the 3<sup>rd</sup> Respondent, command by the Inspector-General.
174. The 3<sup>rd</sup> Respondent submitted that Section 72 of the National Police Service Act establishes a three-tier process: Request by the Inspector-General (operational necessity); Approval by the National Security Council (strategic oversight under Article 240); and Appointment by the 3<sup>rd</sup> Respondent (HR legality under Article 246(3)). Therefore, the Inspector General retains operational command of special police officers once appointed. There is thus no infringement of Article 245(4)(c) or Article 247; rather, this provision exemplifies constitutional cooperation.
  175. It was submitted that Sections 10(1)(a)(c)(k), 10(4)(c)–(g), and 11(e) of the *National Police Service Act* implement the 3<sup>rd</sup> Respondent’s constitutional function to ensure procedural fairness, gender equity, and compliance with due process. The Inspector-General’s operational autonomy remains unaffected because the 3<sup>rd</sup> Respondent’s oversight is limited to employment legality, not operational policing.
  176. The 3<sup>rd</sup> Respondent submitted that Section 10(2) of the *National Police Service Commission Act* allows the Commission to delegate recruitment to the Inspector General, subject to conditions. Delegation presupposes the existence of original power — hence the provision reinforces, rather than dilutes, the Commission’s authority. Further, Section 10(5A) requires that such delegation be in writing and under terms set by the Commission. This arrangement ensures administrative efficiency while maintaining constitutional accountability under Article 246(3).
  177. The 3<sup>rd</sup> Respondent submitted that Section 12(a) of the *National Police Service Commission Act* obligates the Commission to uphold the highest standards of professionalism and discipline in the Service. This duty mirrors Article 244(a) of *the Constitution*. The Inspector-General enforces those standards operationally, while the Commission formulates and monitors them institutionally. Without Commission oversight, the professionalism and discipline envisioned by Article 244 would depend solely on internal command discretion, which *the Constitution* sought to avoid. The section is thus both valid and necessary.
  178. It is the 3<sup>rd</sup> Respondent’s submission that Article 245(4)(c) does not grant the Inspector-General human resource powers; it merely insulates command from political interference. Human resource management remains the exclusive constitutional preserve of the National Police Service Commission under Article 246(3). Accordingly, the statutory provisions complained of are constitutional, valid, and enforceable, and no legitimate question of constitutionalism or legality arises therefrom.
  179. I have considered the averments and submissions of the parties herein. There are 3 issues for this court’s determination.

## Issue No. 1

### Whether this court has jurisdiction to determine this petition.

180. The 3<sup>rd</sup> respondent raised a preliminary objection dated 20<sup>th</sup> October 2025 indicating the issues raised herein fall outside this court’s jurisdiction.
181. The 2<sup>nd</sup> interested party also averred that this court lacks jurisdiction to hear and determine this petition. The petitioner submitted that this court has jurisdiction to determine this petition and indicated that the dispute before court concerns issues of employment to wit recruitment, training, employment assignment, promotion suspension and dismissal including payroll management and human resource records of employees (members of the service) and that these issues are purely employment and labour relations matters and in which this court has jurisdiction.



182. The 3<sup>rd</sup> respondent admitted that this court has jurisdiction in relation to article 246 of *the Constitution* but not on matters under articles 232(2) or 245(d)(b) or independence command.
183. The petitioner herein has approached this court and the contention is on recruitment into the National Police service. He sought other declarations dealing with issues of the position of the National Police Service Commission not being a national security organ.
184. The gist of the petition however relates to recruitment of police officers and the organ or entity responsible for the said recruitment and the demarcation in responsibilities between the National police Service and National Police Service Commission.
185. The pertinent issue however is recruitment which is an employment activity as provided for under section 7(a) of the *Employment Act* 2007 which provide as follows:
- (a) 'employee' includes an applicant for employment;
186. The law is clear that the Employment and Labour Relations Court can deal With matters pre-employment as herein and it is therefore my finding that this court has jurisdiction to determine the issues of police recruitment herein.

## Issue No 2

187. The jurisdictional demarcation of the National Police Service Commission and National Police Service  
The determination of this petition hinges on the interpretation of 3 articles of *the constitution* which are articles 244, 245 and 246 of *the Constitution*. I will quote these articles again and put them in perspective herein.
188. Article 244 of *the Constitution* sets out the functions of the National Police Service and states as follows:
244. The National Police Service shall—
- (a) strive for the highest standards of professionalism and discipline among its members;
- (b) prevent corruption and promote and practice transparency and accountability;
- (c) comply with constitutional standards of human rights and fundamental freedoms;
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- (e) foster and promote relationships with the broader society
189. Article 246 on the other hand establishes the National Police Service Commission and article 246(3) states as follows:
- (3) The Commission shall—
- (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;
- (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and
- (c) perform any other functions prescribed by national legislation.



190. Article 245 of *the Constitution* deals with the command of the National Police Service and subsection (4) states as follows:
- (4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—
- (a) the investigation of any particular offence or offences;
  - (b) the enforcement of the law against any particular person or persons; or
  - (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
191. In seeking to interpret article 244, I note one key function of the National Police Service is to train staff in the discharge of its functions. Under article 246, the National Police Service Commission has the mandate to recruit and approve person to hold or act in offices in the service (emphasis is mine) confirm appointments and determine promotions and transfers within the National Police Service.
192. My reading of article 3 shows that there is a 3-tier responsibility of National Police Service Commission.
1. Recruit and appoint persons to hold and act in offices in the service.
  2. Confirm appointments and determine promotions and transfers within the national police service.
  3. Exercise disciplinary control over and remove person holding or acting in offices within the service.
193. The National Police Service command under article 245 indicates that the Inspector General of the National Police Service has the mandate under article 245(4) and cannot be directed by any person in respect to;
- (a) investigation of offences.
  - (b) enforcement of the law...
  - (c) employment, assignment, promotion, suspension or dismissal of any member of the national police service.
194. From the onset let me point out that there are 2 categories of staff connected to the 3 articles above:
- (1) Offices in the service.
  - (2) Members of the National Police Service.
195. What are the offices in the service?

This issue was determined in High court Misc. 226/203 by G.V. Odunga (as he then was) as follows:

“25... it is noteworthy that whereas the Inspector General was vested with the powers of appointment of any members of the police service, the power to appoint a person to hold offices in the service was a reserve for the commission. Clearly, the drafters of *the constitution* sought to distinguish between members of the service and officers of the service hence the demarcation in their source of appointments. (26) this position is re enforced by section 10(2) of the *National Police Service Commission Act* which provides that subject



to the provisions of *the constitution* or any written law, the commission may delegate to the concerned Inspector General the recruitment appointment and promotion of police officers vide the rank or sergeant.....”

196. Looking at this demarcation in responsibilities, the responsibilities of National Police Service Commission relate only to recruitment, appointment to person to hold and act in office in the service who are not the members in National Police Service.
197. The National Police Service Commission can however confirm these appointments so made and also transfer members of the National Police Service. The National Police Service Commission can also only exercise disciplinary control over and remove person holding or acting in offices within the service.
198. The officer in the service for which the National Police Service Commission can then appoint are not members in the service. The *National Police Service Commission Act* No 30 of 2011 at section 10(1) lists the function of the National Police Service Commission as follows:
  - (1) In addition to the functions of the Commission under Article 246(3) of *the Constitution*, the Commission shall—
    - (a) keep under review all matters relating to standards or qualifications required of members of the Service;
    - (b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;
    - (c) approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of *the Constitution*;
    - (d) co-operate with other State agencies, departments or commissions on any matter that the Commission considers necessary;
    - (e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;
    - (f) develop fair and clear disciplinary procedures in accordance with Article 47 of *the Constitution*;
    - (g) investigate and summon witnesses to assist for the purposes of its investigations;
    - (h) exercise disciplinary control over persons holding or acting in office in the Service;
    - (i) promote the values and principles referred to in Articles 10 and 232 of *the Constitution* throughout the Service;
    - (j) ensure that the Service is efficient and effective;
    - (k) hear and determine appeals from members of the Service;
    - (l) develop policies and provide oversight over training in the Service;
    - (m) approve training curricula and oversee their implementation;
    - (n) investigate, monitor and evaluate the organization, administration and personnel practices of the Service;



- (o) receive and refer civilian complaints to the Independent Policing Oversight Authority, the Kenya National Commission on Human Rights, the Director of Public Prosecutions or the Ethics and Anticorruption Commission, as the case may be, where necessary;
- (p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;
- (q) evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the Service;
- (r) monitor and evaluate the performance of the Service;
- (s) receive complaints and recommendations from police associations registered in accordance with the applicable law;
- (t) perform such other functions as are provided for by *the Constitution*, this Act or any written law.

From the above list, the issue of appointments of the members of the National Police Service is clearly missing.

199. Article 245(4) cited above is however clear that in respect of employment, assignment, promotion suspension or dismissal of any member of the National Police Service, the Inspector General cannot be directed by any person in respect of the said issue. It is therefore indeed the mandate of the Inspector General to employ, assign, promote, suspend and dismiss any member of the Police Service. The Inspector General however has no unilateral powers to confirm appointments and determine promotions and transfers within the National Police Service unless the powers are delegated to him by the National Police Service Commission. The IG however retains his powers of assignment which I interpret assignment of duties to individual members of the service or deployment thereof.

200. In relation to duties of Inspector General and independent command, the Hon. J Makau in High Court Petition No 319 of 2018 also interpreted this issue and held that:

“57. the Independent command further entails commanding the various sub components of command and control in a disciplined service. These include personnel matters and recruitment training, deployment transfer, promotions. I do not agree with) performance, discipline and accountability. It also includes arrangement of instruments of command (ranks) in a hierarchical manner, transfer of services intra and extra series and other government institutions, determination of strength of service, formation and specialised units financial resources and police equipment and other assets. It should therefore be appreciated that the independent command is so important and goes to the powers conferred by *the constitution* upon the IG of National Police Service and find that this court should resist the petitioners invite into issuing the said orders as it would amount to this courts interference with the independent command of the IG of National Police Service and which would be contrary to clear constitutional provision....”

201. I do not agree with all that the learned Judge indicated as the duties assigned to the Inspector General but I do agree that the independent command of the Inspector General is key to security of the nation



and National Police Service Commission being not a security organ cannot usurp the powers of the Inspector General and purport to recruit officers for the Inspector General when the National Police Service Commission itself does not have the capacity and expertise to do the said assignment.

202. As concerns provisions of the [National Police Service Commission Act](#), section 10(1) (a), (c), (k) 10(2) 10(4) (c) (d) (e) (f) and (g) 11(1) (e) and (j) and 12(a) cited herein the petitioner has asked this court to declare them unconstitutional. I will hesitate to do so at this point and especially given that the issues therein go beyond the employee-employer arena and do not directly impact on the members of the service but on the relationship between the 2 organs.
203. It is also true in relation to provision of section 2(1), 8A (1) 10(1) (g) 21(2) (e) 29(4) 33, of the [National Police Service Act](#) which also relate to functions of the National Police Service some functions of the Inspector General have been watered down contrary to what is envisaged under [the constitution](#).
204. In order to avoid a greater miscarriage of justice, I would direct that the 2 acts of Parliament be reviewed comprehensively with a view of aligning them to [the Constitution](#) in order to avoid interference with the powers of the Inspector General and for greater national security and to avoid a conflict clearly visible with the constitutional provisions.
205. Having analysed the averment above, I come to the conclusion that the petition herein as it relates to the demarcation of powers between the National Police Service Commission and National Police Service is found merited and I return the following verdict:-
1. A declaration be and is hereby issued that the National Police Service Commission is not a national security organ under Article 239(1) of [the Constitution](#).
  2. A declaration be and is hereby issued that the recruitment by national security organs under Article 238(2) (d) of [the Constitution](#) can only be done by the national security organ itself not any other entity outside the national security organ.
  3. A declaration be and is hereby issued that Article 243 establishes the National Police Service and that it constitutes the Kenya Police Service and the Administration Police Service and that the constitutional functions and duties vested in the national police service must be performed by it and not any other person.
  4. A declaration be and is hereby issued that Article 244(a) and (d) of [the Constitution](#) vests on the National Police Service the function to (a) strive for the highest standards of professionalism and discipline among its members; and (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.
  5. A declaration be and is hereby issued that Article 245(1) &(2)(b) of [the Constitution](#) establishes the Inspector General of the National Police Service and provides in mandatory terms that the Inspector General shall exercise independent command over the National Police Service.
  6. A declaration be and is hereby issued that Article 245(2)(b) and (4)(c) of [the Constitution](#) vests independent command of the National Police Service and provides that no person may give a direction to the Inspector-General with respect to the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.
  7. A declaration be and is hereby issued that Article 246(1) and (3) of [the Constitution](#) establishes the National Police Service Commission and vests on it the power to appoint and recruit persons holding or acting in offices in the service and to exercise disciplinary control, transfer, and promote persons holding or acting in offices.



8. A declaration be and is hereby issued that Constitution creates two distinct classes of persons in the service: members of the service who are under the independent command of the Inspector General and persons holding offices in the service that are under the remit of the National Police Service Commission.
9. A declaration be and is hereby issued that article 238(2)(d), 239(1), 243, 244(a) & (d) and 245 1, (2)(b) and (4)(c) of *the Constitution* vests on the National Police Service and the Inspector General the independent command concerning the recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, without any direction or control from the National Police Service Commission.
10. A declaration be and is hereby issued that Articles 238(2)(d), 239(1) 243, 244(a) & (d) and 245 1, (2)(b) and (4)(c) of *the Constitution* read with Sections 4 and 22 of the *National Police Service Act* and the first schedule to the Act in relation to members of the service relates to Inspector General; Deputy Inspector General Senior Assistant Inspector General; Assistant Inspector General; Senior Superintendent; Superintendent; Assistant Superintendent; Chief Inspector; Inspector; Senior Sergeant; Sergeant; Corporal; and Constable.
11. A declaration be and is hereby issued that under the constitutional doctrine of independent command under Article 245(1)(2)(b) and (4)(c) of *the Constitution*, the National Police Service Commission has no power in relation to employment, assignment, promotion, suspension or dismissal of members of the service.
12. A declaration be and is hereby issued that any purported recruitment process advertised or initiated by the said Peter Leley, EBS and/ or the National Police Service Commission is unconstitutional, ultra vires, null and void ab initio, for violating Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4)(c) of *the Constitution*.
13. A declaration be and is hereby issued declaring the Legal Notice No. 159 of 19<sup>th</sup> September 2025 as unconstitutional, for violating Articles 2(4), 238(2)(d), 239(1)(c), 240(3), and 245(4) (c) of *the Constitution*.
14. A permanent order be and is hereby issued directed at the National Police Service Commission barring and/or restraining it from the recruitment, training, employment, assignment, promotion, suspension and dismissal of the members of the service, including a permanent stay of the advertisement dated 19<sup>th</sup> September, 2025 on the Daily Nation and legal Notice no. 159 of 19<sup>th</sup> September 2025.
15. There will be no order of costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**HELLEN WASILWA**

**JUDGE**

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