

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E051 OF 2025**

**IN THE MATTER OF AN APPLICATION BY THE  
APPLICANT HERITAGE MABATI MILLS**

**LIMITED FOR ORDERS OF PROHIBITION AND  
CERTIORARI**

**IN THE MATTER OF SECTIONS (1) AND (2) OF THE  
EMPLOYMENT ACT**

**IN THE MATTER OF SECTION 35(1) OF THE LABOUR  
INSTITUTION ACT**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE  
ACTION ACT, NO. 4 OF 2015**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW  
REFORM ACT, CHAPTER 26**

**AND**

**IN THE MATTER OF THE INTENTION TO PROSECUTE  
FOR NON-PRODUCTION OF EMPLOYMENT RECORDS**

**BETWEEN**

**HERITAGE MABATI MILLS LIMITED..... APPLICANT**

**-VERSUS -**

**CABINET SECRETARY,**

**MINISTRY OF LABOUR, SOCIAL**

**SECURITY AND SERVICES..... 1<sup>ST</sup> RESPONDENT**

**DIRECTORATE OF LABOUR,**

**THIKA SUBCOUNTY..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL..... 3<sup>RD</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Wednesday 17<sup>th</sup> December,  
2025)*

**JUDGMENT**

1. The applicant filed the originating motion dated 07.08.2025 through Nasimiyu & Company Advocates. The application was under rule 11 of the Fair Administrative Action Rules, 2024 (Legal Notice 165 of 2024), Section 8(2) of the Law Reform Act, Cap 26 Laws of Kenya, Order 53 of the Civil Procedure Rules,

2010, and all other enabling provisions of law. It sought for orders as follows:

- a) An order of *Certiorari* in the High Court to remove in this Honourable Court and quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> respondents conveyed through the notice dated 31<sup>st</sup> July, 2025, declaring that the respondents' intention to prosecute the applicant for non-production of employment record by close of business Monday 04.08.2025.
- b) An order of Prohibition prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents from conducting another labour inspection/audit of the applicant's employment records.
- c) An order of Prohibition restraining and/or prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents by themselves, agents and/or employees from instituting criminal or civil proceedings based either on the applicant's failure to produce its employment records or based on the outcome of any such inspection/audit.
- d) The costs of this application be provided for.

2. The application is based on the grounds set out in the motion and supported by the affidavit sworn on 07.08.2025 by Leonard Leilong. The applicant's case was as follows:
  - a. *Vide* a letter dated 06.05.2025, the Sub-County Labour Officer, Thika, sought to audit the applicant's employment records for the last 36 months, which the applicant subsequently supplied to the respondents. On 19.05.2025, the respondents carried out a labour inspection audit at the applicant's premises to establish the applicant's level of compliance with the labour laws.
  - b. Following the audit, the respondents issued the applicant with a Labour Inspection and Audit Report dated 22.05.2025 that concluded the applicant is following the terms and conditions of employment. A follow-up inspection was to be made six months from the said date. However, the applicant was thereafter issued with a notice to prosecute dated 31.07.2025 for non-production of employment records, in an act that is illegal and against the rules of natural justice.
  - c. The respondents have never offered the applicant any reasons

or clarification for conducting a second labour inspection in such a short period of time, and their failure to observe the six months stated in the audit report. Therefore, there is a rebuttable presumption that the impugned notice was issued without good reason.

- d. Further, the 1<sup>st</sup> and 2<sup>nd</sup> respondents' officers have been harassing or intimidating the applicant and demanding monetary favours to forego the second audit, which the applicant has refused to comply with.
- e. There are procedural irregularities and/or illegalities or abuse of power exhibited in the materials placed before this Court to warrant granting the orders sought. It is also in the public interest that the prayers sought in the application are granted.

3. The respondents filed the replying affidavit of Edwin Dismas Okumu, Sub-County Labour Officer in Thika, sworn on 08.09.2025 through the Office of the Attorney General. They averred that:

- (i) No valid labour inspection audit was conducted on 19.05.2025 as alleged. The letter dated 06.05.2025 (annexed

as *LL-1*) was issued by Gladys W. Mutahi, without authority from the 2<sup>nd</sup> respondent and was therefore not a valid request for records. As per official records, the inspection was scheduled to be conducted by Officer M.N. Mukhebo on 20.05.2025.

(ii) Subsequent lawful demands for records were made under Sections 10 and 74 of the Employment Act (Cap 226) and Section 35(1) of the Labour Institutions Act (Cap 234), but the said records were not produced.

(iii) The purported report issued by Gladys Mutahi on 22.05.2025 suspiciously surfaced on 04.08.2025 after repeated non-compliance by the applicant, and was deemed falsely presented in contravention of Section 75 of the Employment Act (Cap 226). The report was being withheld for internal disciplinary action against the officer, and any prior “inspection” was officially withdrawn. Therefore, the six-month follow-up period did not apply as no valid audit occurred.

- (iv) The sequence of events leading to the Notice to Prosecute dated 31.07.2025 was triggered by anonymous complaints from concerned employees alleging labour malpractices at the applicant, as set out in the subject prosecution notice. The respondents validated the complaints received and found evidence confirming the legitimacy of the complaints and the need for a thorough, procedurally compliant audit to protect the workers' rights.
- (v) The Notice to Prosecute was lawfully issued after multiple unanswered demands and in exercise of powers under Section 35(1) of the Labour Institutions Act and Article 47 of the Constitution of Kenya.
- (vi) The allegations of harassment, intimidation or demands for monetary favours by officers of the 1st or 2nd respondents are baseless, defamatory and designed to malign the Ministry and divert from the applicant's non-compliance. The allegations should thus be struck out as scandalous.
- (vii) Judicial review is not warranted as administrative remedies, through the production of records for audit, were

not exhausted. The instant application seeks to evade lawful inspection and prejudice public interest in enforcing labour laws and protecting workers' rights. The applicant will suffer no irreparable harm from a lawful audit, whereas delay could perpetuate alleged malpractices evidenced herein. Lastly, costs should be awarded to the respondents.

4. The applicant then filed a further affidavit sworn on 30.10.2025 by Leonard Leilong, who averred that the respondents have failed to state with precision the lawful demand made and subsequently not acceded to by the applicant to justify the subject notice to prosecute. Further, the respondents have failed to demonstrate that the said Gladys Mutahi lacked authorization to request and/or inspect the applicant's records. Gladys W. Mutahi is a labour officer and employee of the respondents, and no evidence has been produced that the said officer was subjected to disciplinary procedure. It was further averred that by scheduling a second inspection, the respondents violated the applicant's rights and breached the principle of legitimate expectation. The law does not permit concurrent or excessive labour inspection, especially when

a report has already been issued confirming compliance. The issues raised in the replying affidavit reek of internal wrangles and administrative breakdowns that have nothing to do with the applicant. The respondents have essentially failed to demonstrate the reasonability of the prosecution notice. The applicant is further aggrieved that the respondents did not accord it any opportunity to be heard before making their decision as outlined in its letter dated 31.07.2025, in breach of Article 47 of the Constitution and Sections 4(2) and (3) of the Fair Administrative Actions Act.

5. The parties filed their respective written submissions. The Court has considered the material on record and returns as follows.
6. The 1<sup>st</sup> issue is to determine the scope of the 1<sup>st</sup> and 2<sup>nd</sup> respondents' authority or power to undertake labour inspections or audits.
7. Part V of the Labour Institutions Act, 2007 provides for Labour Administration and Inspection.
8. Section 34 of the Act states as follows:

“34.(1) An authorised officer may, either alone or in the presence

of another person, enter any premises or place where persons are, or may be, employed for the purpose of performing his duties as specified under this Act or any other labour law. (2) An authorised officer shall, on the occasion of an inspection or visit authorised by or under the provisions of this Act, notify the employer or his representative of his presence for that purpose at the first practicable opportunity, unless it is considered by the authorised officer concerned that the notification may be prejudicial to the performance of his duties or otherwise likely to defeat the object thereof.”

9. Section 35 of the Act states as follows on powers of a labour officer states as follows:

“35.(1) A labour officer may, for the purpose of monitoring or enforcing compliance with any labour law—

(a) require the production of wage sheets or other employment records kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by any labour law or wages order to be kept by employers, and to inspect and examine those sheets or

records and copy any material part thereof;

(b) require any person giving out work and any out-worker to give any information which is in that person's power to give with respect to the names and addresses of the persons to whom the work is given or from whom the work is received and with respect to the payments to be made for the work;

(c) inspect and copy any material part of any list of outworkers kept by an employer or other person giving out work to outworkers; and (d) examine, either alone or in the presence of any other person, with respect to any matter under Part VI, any person whom the labour officer has reasonable cause to believe to be or to have been an employee to whom a wages order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business, and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined: Provided that no person shall be required to give any information that incriminates him;

(e) at all reasonable times, enter, inspect and examine any land or

building, other structure, whether permanent or temporary on or in which the labour officer has reasonable ground to believe that an employee is residing or is employed, and may make such inquiry, inspection or examination as may be necessary to enable the labour officer to determine whether the provisions of this Act or any other labour law are being complied with;

(f) at all reasonable times, require an employer to produce an employee employed by him and a document relating to the employment of any employee, and may require an employee to produce any document relating to the employee's employment;

(g) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he has reasonable ground to believe to be or to contain evidence of an offence under this Act or any other labour law;

(h) enter, inspect and examine all latrines and other sanitary arrangement or water supply;

(i) inspect and examine all food provided or appearing to be provided for the employees, and take samples thereof in

duplicate, in the presence of the employer or the employers representative which samples shall be sealed and one sample so sealed shall be left with the employer.

(j) order that all buildings and premises where employees are housed or employed be kept in a clean and sanitary condition;

(k) without prejudice to the powers of the Attorney-General, institute proceedings in respect of any contravention of any provision of this Act or for any offence committed by an employer under this Act or any other labour law;

(l) institute an appeal on behalf of any employee in any civil proceedings by an employee against his employer in respect of any matter, thing or cause of action arising out of or in the course of the employment, whether such civil proceedings are contemplated or instituted by the employee himself or are civil proceedings ordered by a magistrate;

m) without prejudice to the institution of proceedings in respect of any offence, to take into custody and return to his parent or guardian, or other person whom he is satisfied has for the time being the charge of or control over him, any child whom he

reasonably suspects to be employed in contravention of any of the provisions of the law relating to employment.

(2) Where a labour officer seizes a register, record, book or other document in the performance of the labour officer's duties subsection (1)(g), the labour officer shall give to the employer or his representative a receipt in respect of such register, record, book or other document in the prescribed form.

10. Section 38 of the Act creates an offence as follows;

“38. A person who—

(a) wilfully obstructs or hinders an authorised officer in the exercise of any power conferred by this Act or any rules made under this Act; or

(b) neglects or fails to comply with any requirement or order made or given by an authorised officer in pursuance of any power conferred by this Act or any rules made under this Act, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.”:

11. Section 10 of the Employment Act, 2007 provides for

employment particulars to be prepared and included in a written contract of employment by the employer and which the employer is expected to produce in any legal proceedings as may be required. Section 74 of the same Act provides for employment records to be kept by an employer and further states, “74. (2) An employer shall permit an authorised officer who may require an employer to produce for inspection the record for any period relating to the preceding thirty-six months to examine the record.”

12. The Court has considered the foregoing statutory provisions and returns that the power of a labour officer or inspector to enter an employer’s premises and to undertake labour inspection and to obtain labour statistics as prescribed is continuous and is exercisable from time to time as need shall arise. Thus, the Interpretation and General Provisions Act (Cap.2) provides in section 42 provides thus, “42. Where a written law confers a power or imposes a duty, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as the occasion arises.” The Court returns that the section applies and the labour officer is entitled to

exercise the power from time to time as occasion arises.

13. The **2<sup>nd</sup> issue** for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents were entitled to issue the impugned letter dated 24.07.2025 to undertake an audit or inspection **against the applicant and** the subsequent notice to prosecute on account of non-production of employment records by the respondent.

14. The letter of 24.07.2025 was addressed to the applicant company by Edwin D. Okumu, the Thika Sub-County Labour Officer. The letter stated that the labour office had received complaints reports.

The letter further stated to the following effects:

- a) Labour inspection report dated 22.05.2025 ref.No. MLSP/THIKA/GWM/INSP/2025 presented to the labour office and claiming that a labour inspector one Gladys W. Mutahi had carried out the inspection exercise and submitted a report on the same had in fact not been carried out following laid down Labour Administration Guidelines and Procedures and the copy of that document had been withheld for purposes of administrative disciplinary procedure.

- b) No annual audit or inspection had been carried out for the applicant company and report submitted per prescribed form LD101 being the mandatory prescribed Inspection Questionnaire. No documentation had been submitted to the Sub-County Labour Office for perusal, approval and submission from the applicant by any of the respondents' authorised officer by the said Gladys per procedure applicable. The letter of 24.07.2025 therefore specifically withdrew the letter of 22.05.2025 signed by the said Gladys and purporting to be a labour inspection or audit report that purported to return that the applicant had complied with most terms and conditions of employment and that a follow up inspection would be made after six months to check on improvements.
- c) The purported report by the said Gladys was falsely presented in contravention of section 75 of the Employment Act and which states, "A person who makes, causes to be made or knowingly allows to be made an entry in a register, record, book or other document whatsoever, required by this

Act to be kept, which that person knows to be false in a material particular, or produces, furnishes, causes or knowingly allows to be produced or furnished, to an authorised officer, a register, record, book or other document which he knows to be false in a material particular, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.”

- d) The main reason for initiating a full and thorough audit on employment records was in view of a complaint on labour malpractices by a walk-in employee who gave information that had to be substantiated through a rigorous inspection exercise.
- e) By the letter of 18.06.2025 the Sub-county Labour Officer had addressed the applicant about a labour complaints and malpractices reported at the office and invited the applicant to a deliberative meeting fixed for 20.06.2025 at 10.30am and further notified that the office would conduct a

thorough labour inspection for the applicant company on specific documents including copies of appointment and contract letters; payroll for all casual, contractual and permanent staff; payslip copies for all staff; payment sheets for casual staff; leave register for permanent employees and leave payment sheet for casual and contractual employees; records of NSSF, SHA/SHIF, NITA and KRA (P9 Forms copies) numbers; and, list of sub-contractors and their terms and conditions of service if any. The requirements would be for a period of one year and it was with respect of exercise of powers under section 35(1) of Labour Institutions Act Cap 234.

- f) The letter concluded thus, “Failure to abide by the above-mentioned instructions, this office will have no option but to invoke section 38 of the Labour Institutions Act Cap 234 for wilfully obstructing or hindering an authorised officer in the exercise of any power conferred by the Act or any rules made under the Act.

15. It appears the applicant did not cooperate to allow the inspection

to take place hence the issuance of the notice to prosecute dated 31.07.2025. It is submitted for the applicant that the notice to prosecute was unreasonable, unfair and constituted abuse of power. It is submitted for the applicant that the respondents were not entitled to issue the notice of 31.07.2025 in view of the compliance inspection or audit report letter of 22.05.2025 and the notice to prosecute had been issued arbitrarily. It was submitted that the applicant acquired a legitimate expectation when the letter of 22.05.2025 promised that a further visit would be made after six months to confirm improvements. Reliance was placed on **Diana Kethi Kilonzo & Another –Versus- Independent Electoral & Boundaries Commission & 10 others [2013] eKLR** where it was held that the doctrine of legitimate expectation arises out of a promise made by a public body or official which the persons relying on anticipate will be fulfilled and that the promise is an estoppel. Further, it was unfair to schedule a second inspection prior to conclusion of the disciplinary proceedings to establish whether Gladys who had issued the clean bill of health per letter of 22.05.2025 had indeed

breached the Labour Administrative Guidelines and Procedures as was alleged. It was alleged and submitted for the applicant that the notice of 31.07.2025 had been issued in breach of rules of natural justice because notice of inspection issued on 06.05.2025 had issue but was disregarded; inspection carried out on 19.05.2025 was disregarded; and, the resulting audit report on compliance dated 22.05.2022 was equally disregarded. Accordingly, it was submitted that the notice to prosecute was unreasonably issued.

16. The respondents' submissions were filed through learned counsel Valentine Jepkemei, Senior State Counsel. It was submitted that the applicant was asked to submit employment records per letter of 18.06.2025 but no response was received and the applicant failed to attend the meeting the Sub-County Labour Officer convened for 28.07.2025. Accordingly, the notice to prosecute issued in view of the offence in section 38 of the Labour Institutions Act. The respondents relied on **Green Line Sacco Limited v Cabinet Secretary, Ministry of Labour and Social Protection & another [2023] KEELRC 3104 (KLR)** where the

court held that “To answer the 1<sup>st</sup> issue, the petitioner has not rebutted any of the provisions of law set out in the replying affidavit that empower the respondents by themselves or by the officers enumerated from undertaking the kind of the inspection subject of the instant dispute. To answer the 2<sup>nd</sup> issue, as submitted for the respondents, the Court cannot issue the kind of orders as prayed for with the consequence that the respondents are thereby barred from undertaking their lawful duties and functions as provided in the various statutes as stated in the statutory provisions referred to in the replying affidavit. To answer the 3<sup>rd</sup> issue, the inspection notice was properly issued within the statutory authority of the respondents. It was not ultra vires or unlawful or outside jurisdiction or in breach of the rules of natural justice or fair administrative action as envisaged in Article 47 of the Constitution. As submitted for the respondents, the petitioner has not set out how the respondents have violated Articles 27 and 47 of the Constitution. The decision to inspect the petitioner’s premises was not shown to have been discriminatory as it was a decision made by the respondents in their ordinary or

routine work and as was authorized by the relevant statutory provisions duly cited for the respondents. The respondents have succeeded and the petitioner is liable to pay costs. None of the reliefs prayed for has been shown to be justifiable.”

17. It was submitted that the respondents had acted lawfully through the Sub-County Labour Officer and the reliefs prayed for should not issue. In particular, the respondents submitted that the Applicant seeks orders of Certiorari and Prohibition, which lie only to correct illegality, irrationality, or procedural impropriety in decision-making not to shield a party from lawful investigation.
18. The Court has considered the facts, the evidence, and the submissions. The Court finds and returns as follows:
  - a) The evidence is that the purported earlier audit report by the said Gladys was cancelled. It is immaterial that the disciplinary process against Gladys had not been concluded. The applicant has not rebutted the respondent’s case that the earlier audit report had been carried out without following the prescribed procedures and standard forms had not been

used or that it had issued without proper or no audit or investigation. Accordingly, the applicant resisted what it called second audit or inspection without due and proper foundation.

- b) The Court has also found out that the labour officer can undertake an inspection as occasion arises. Even if the earlier inspection had taken place and assuming validly so by the said Gladys, the promise in the letter by Gladys that a visit would come only after six months and only to check on improvements would not operate as to confer a legitimate promise in view of the statutory provisions that the labour officer was entitled to undertake inspection or call for employment records from time to time as occasion arose or demanded. That the letter of 22.05.2025 on earlier inspection by Gladys by itself confirmed no clean bill of compliance on the part of the applicant when it stated that the applicant had been found compliant with “most” terms and conditions of employment and further, “A follow up inspection will be made after six months to check on

improvements made.” The respondents have exhibited the complaints that had been received and the inspection and demand that the applicant provides records is found to have been bona fides and not irrational, unlawful, estopped, unconstitutional or unreasonable as urged for the applicant.

c) As submitted for the respondents the Court will not issue orders to stop the respondents by themselves or their agents and officers from undertaking their valid and lawful constitutional authority or power.

d) The application is found liable to dismissal with costs.

In conclusion the applicant’s case herein is hereby dismissed with costs.

**Signed, dated and delivered by video-link and in court at Nairobi  
this Wednesday 17<sup>th</sup> December, 2025.**

**BYRAM ONGAYA,  
PRINCIPAL JUDGE**