

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
PETITION NO. E153 OF 2025

SOLOMON KIKEMU MUASA.....PETITIONER

VERSUS

INTERNATIONAL LIVESTOCK

RESEARCH INSTITUTE.....1ST RESPONDENT

PROF. APPOLINAIRE DJIKENG,

THE DIRECTOR GENERAL,

INTERNATIONAL LIVESTOCK

RESEARCH INSTITUTE.....2ND RESPONDENT

KAPITI PLAINS ESTATE LIMITED..... 3RD RESPONDENT

THE PRINCIPAL SECRETARY,

MINISTRY OF FOREIGN AFFAIRS..... 4TH RESPONDENT

DIRECTORATE OF CRIMINAL

INVESTIGATION.....5TH RESPONDENT

DIRECTORATE OF CRIMINAL

INVESTIGATION, DIPLOMATIC UNIT...6TH RESPONDENT

CHIEF INSPECTOR OF POLICE

PHILLIP BII.....7TH RESPONDENT

PC ISAIAH WAFULA,

DCI DIPLOMATIC UNIT.....8TH RESPONDENT

THE CHIEF MAGISTRATE’S

COURT KIAMBU.....9TH RESPONDENT

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

RULING

1. The 1st and 2nd respondents filed the notice of preliminary objection dated 12.08.2025 through Gitahi Munyi & Associates Advocates. They prayed that the petition and application dated 29.07.2025 be consequently struck out with costs on the following grounds:

(i) That the 1st respondent is an international organization enjoying immunity from Court and legal process conferred on it by Section 9 of the Privileges & Immunities Act, Chapter 179 of the Laws of Kenya and by virtue of the Host Country Agreement between the 1st respondent and the

Government of the Republic of Kenya dated 29th December, 1994.

- (ii) That the 2nd respondent, by reason of being the Director General of the 1st respondent, enjoys privileges and immunities specified in Part III of the Fourth Schedule to the Privileges & Immunities Act, Chapter 179 of the Laws of Kenya and the privileges and immunities, exemptions and facilities accorded to diplomatic envoys under international law pursuant to the said Host Country Agreement.
- (iii) That 1st respondent, on its own behalf and on behalf of the 2nd respondent, has neither waived the said immunities nor consented to be sued or made a party to these proceedings, and has not otherwise subjected itself or the 2nd respondent to the jurisdiction of this Honourable Court, and as such ought not to have been impleaded in these proceedings.
- (iv) That this Honourable Court lacks jurisdiction to hear and determine these proceedings in as far as they relate to the orders sought in the said petition and notice of motion application against the 1st and 2nd respondents.

(v) That these proceedings are therefore an abuse of the process of the Honourable Court.

2. The 1st and 2nd respondents also filed a notice of motion dated 12.08.2025 brought under sections 1A, 1B, 3A of the Civil Procedure Act, Section 9 of the Privileges and Immunities Act, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules and all enabling provisions of the law. They prayed that the 1st and 2nd respondents be struck out of the petition and the notice of motion application both dated 29.07.2025; and, costs of the application be provided for. The grounds upon which the application was based were as follows:

a) By Kenya Gazette Notice Vol. CII – No. 3 dated 12.01.2001 Cabinet Secretary for Foreign Affairs published the Privileges and Immunities [The International Livestock Research Institute (ILRI)] Order as Legal Notice No.2 of 2001. By that publication the 1st respondent was declared an organization to which section 9 of Privileges and Immunities Act, Cap 179 shall apply.

- b) Accordingly, the 2nd respondent as an officer of the 1st respondent was accorded the privileges and immunities specified in paragraph 2 to 7 of Part III of the 4th Schedule to the Privileges and Immunities Act Cap 179.
- c) The 1st and 2nd respondents consequently enjoy immunities including immunity from legal process.
- d) The proceedings before the Court filed by the petitioner against the 1st and 2nd respondents are civil in nature and the 1st and 2nd respondents enjoy immunity from civil process and therefore the Honourable Court does not have jurisdiction to entertain a claim against them in absence of a waiver.
- e) The claim is therefore non-situated against the 1st and 2nd respondents who ought to be struck out from the petition and notice of motion both dated 29.07.2025. The proceedings against the 1st and 2nd respondents is an abuse of Court process.

3. In response, the petitioner filed the replying affidavit dated 12.09.2025 through Patricks Law Associates. He urged and stated as follows:

- i) The petition dated 29.07.2025 is purely an employment dispute between the petitioner and the 1st, 2nd and 3rd respondents, with the other parties being sued for violating and/or threatening to violate the fundamental rights and freedoms of the petitioner, at the behest of the 1st and 2nd respondents.
- ii) Whereas the 1st and 2nd respondents enjoy immunities, it is a restrictive immunity that does not cover employment matters as expressly outlined under the UN Convention on Jurisdictional Immunities of States and their Property. Employment matters fall under the purview of private law, where immunity is restricted under the Privileges and Immunities Act and the Vienna Convention on the Law of Treaties.
- iii) The 3rd respondent incorporated Kapiti Ranch Limited under the Companies Act of Kenya, and assigned the

petitioner enormous and extra responsibilities outside the purview of his job description. The said duties include managing compensation and benefits, employee relations functions and the entire human resources portfolio at the 3rd respondent, yet he was an employee of the 1st respondent. The petitioner contended that without the 1st respondent deploying him to the 3rd respondent, there would not be any extra responsibilities for the claim herein.

- iv) Despite the 1st and 2nd respondents being granted immunity, they have defiled, desecrated, vandalized and profaned the immunity by engaging in conduct unworthy of the institution that enjoys immunity under the law.
- v) The subject petition was instituted on the strength of the letter dated 18.06.2025 from the Principal Secretary, Ministry of Foreign Affairs, indicating that the Ministry had reviewed the petitioner's concerns as lodged and advised ILRI to reconsider the workload assigned to him and compensate him accordingly. ILRI responded, expressing willingness to settle the matter based on the Ministry's

guidance conveyed in the letter dated 16.11.2024, proposing a final payment of Kshs. 4,507,453.80 on a *without prejudice* basis. However, no consensus was reached thereafter, as mediation efforts were declared unsuccessful, and the Ministry informed the petitioner to pursue alternative legal remedies through competent courts.

- vi) Consequently, if the 1st and 2nd respondents are struck out as parties, the petitioner would be completely locked out of the seat of justice and abandoned to his own fate.
- vii) The 1st and 2nd respondents have acquiesced and submitted themselves to the law, legal processes and the jurisdiction of Kenya as follows:
 - a. They registered Kapiti Ranch Limited under the Companies Act and are therefore subject to the corporate laws of Kenya.
 - b. They caused the filing of *Miscellaneous Criminal Application No. E327 of 2025 - Republic through DCI vs. Solomon Muasa Kikemu* at the Chief Magistrate's Court in Kiambu, seeking the protection of the courts of law

against the alleged offence under section 14 of the Computer Misuse and Cybercrimes Act, 2018.

c. By the letter dated 09.06.2025, the 1st respondent, through their advocates on record herein, wrote a demand letter addressed to the petitioner acknowledging the Data Protection Act of 2019 and its edict as norm for protection of personal data of the 1st respondent.

viii) Further, the 2nd respondent has filed with the police three criminal complaints against the petitioner, in which no criminal charges have been proffered against him, with the sole intention of frustrating, intimidating and harassing the petitioner from pursuing court remedies for unfair, unlawful, wrongful, unjustifiable and illegitimate termination of his employment. The 2nd respondent can therefore not claim immunity.

ix) The 1st and 2nd respondents' claim for immunity is ridiculous and contemptuous because of their conduct. The petitioner queries whether the 1st and 2nd respondents would refuse and/or fail to appear in court to testify and be cross-

examined (due to immunity) if the criminal complaint against him results in him being charged in court. Similarly, would they refuse to record a statement with the Data Protection Commissioner due to immunity?

- x) It is premature for the 1st and 2nd respondents to plead immunity at the interlocutory stage, considering prayer B of the petition seeks a declaration of the unconstitutionality of article V (1) and (2) in the Host Country Agreement between the Government of Kenya and ILRI dated 29.12.1994.
- xi) In any event, article XVI of the Host Country Agreement prohibits abuse of privileges, stating that ILRI, its Director General and designated representatives resident in Kenya shall co-operate at all times with the government to facilitate the proper administration of justice, the observance of the laws of Kenya, and avoid abuse of immunities and privileges accorded in the agreement.
- xii) Evidently, the theme of the instant petition is centred on the 1st and 2nd respondents abusing their privileges, and they

cannot therefore be struck out of the petition on the plea of immunity.

4. The 1st and 2nd respondents/applicants and the petitioner/respondent filed their respective submissions. The 4th to 9th respondents also filed their written submissions in support of the preliminary objection dated 12.08.2025 and filed through learned Senior State Counsel Valentine Jepkemei, for Attorney General. The Court has considered the material on record. The Court returns as follows:

5. The petitioner's case is that he filed the instant case because of the failed Ministry of Foreign Affairs mandated process to resolve the unfair termination of employment contract dispute between the petitioner and the 1st and 3rd respondents as based upon Article V (1) and (2) of the Host Agreement between the Government of the Republic of Kenya and the International Livestock Research Institute (ILRI) dated 29.12.1994. Further, that the Ministry had communicated the failed process by the letter dated 18.06.2025. Article V (1) and (2) of the Host Agreement provides on immunity from legal process as follows:

‘1. ILRI, Its property, assets and other facilities , wherever located and by whomsoever held, shall enjoy Immunity from every form of legal process except insofar as any particular instance It has waived Its immunity. It is however understood that no waiver of immunity shall extend to any measure of execution.

2. Any dispute or legal claim brought against ILRI in Kenya, other than by the Kenyan Government, shall be referred to the Ministry of Foreign Affairs for negotiation and settlement.”

6. The petitioner has pleaded in the petition as follows:

a) He was employed by the 1st respondent for a period of unbroken service of 9 years from 2015 until 30.05.2024 when his contract of employment was unfairly, wrongfully, unlawfully and unjustifiably terminated on 30.05.2024 by the 1st and 2nd respondents. He had been initially employed as Compensation and Benefits Officer and he rose through the ranks to Senior Manager, People and Organizational Development as at termination.

b) As at termination his contract had been renewed for the fourth term by a renewal contract of 29.06.2021 and was to

end on 31.07.2024 but it was prematurely terminated on 30.05.2024 in violation of the 1st respondent's People and Organizational Development Policies and Procedures Manual, the employment contract and the doctrine of legitimate expectation. The contract was renewable subject to performance, project needs and continued funding.

- c) The 1st and 2nd respondents deployed the petitioner to serve at the 3rd respondent on duties and responsibilities about human resource, the 3rd respondent being a limited company established under the Companies Act Cap 486 (repealed) and is owned, controlled and managed by the 1st respondent.
- d) The petitioner's case is that his immediate supervisor, the 1st respondent's Director, People and Organizational Development, one Stella, summoned the petitioner and casually, inappropriately and haughtily conveyed that the petitioner's employment had been terminated and that the 1st respondent had no obligation to explain the reasons for the premature termination of the contract of employment. He was notified that 30.07.2024 was to be his last day at

work and the 1st respondent directed its security personnel to kick him out of the 1st respondent's premises.

e) He immediately appealed to the 2nd respondent against the termination and refusal of renewal of contract. He also claimed in his appeal compensation for extra work done when he was deployed to work for the 1st and 3rd respondents. By an email dated 12.06.2024, the 2nd respondent conveyed that the petitioner's appeal had been dismissed and termination decision upheld.

f) He made a 2nd appeal to the 2nd respondent on 12.06.2024 but the 2nd respondent dismissed the 2nd appeal per the letter of 23.07.2024.

g) By letter dated 23.07.2024 and per Article V (1) and (2) of the Host Agreement of 29.12.1994, the petitioner filed a complaint of unfair termination of employment by the 1st respondent to the Ministry of Foreign Affairs, the 4th respondent, claiming a sum of Kshs.59,629,219.89 for salary differential and responsibility allowance. The 2nd respondent for the 1st respondent responded to the complaint by the

Note Verbale dated 11.09.2024 and the 4th respondent forwarded the same to the petitioner.

- h) A meeting was held on 26.09.2024 convened by the 4th respondent and the petitioner was asked by the 4th respondent to file a claim limited to responsibility allowance only and by letter dated 02.10.2024 the petitioner claimed responsibility allowance of Kshs.31,318,248.02.
- i) By letter dated 06.11.2024 the 4th respondent communicated the counter-offer of Kshs.4, 507,453.80 by the 1st respondent and upon “without prejudice basis.”
- j) On 16.12.2024 parties met as convened by the 4th respondent but failed to agree on the responsibility allowance and the 4th respondent declared the mediation process unsuccessful and that the petitioner was at liberty to pursue alternative legal remedies through competent courts.
- k) Thus, the petitioner has filed the instant petition to pursue his constitutional rights and fundamental freedoms as well

as employment and labour claims against the 1st, 2nd and 3rd respondents.

l) The petitioner pleads that after the disagreement of 16.12.2024, at the behest of the 1st and 2nd respondents, the 5th, 6th, 7th, and 8th respondents hunted, pursued, intimidated, harassed, searched and confiscated the petitioner's items. The petitioner in the circumstances claims breach of the Bill of Rights as pleaded in the petition. He has prayed for specific constitutional reliefs against the respondents. The 1st prayer is for a declaration that the 1st and 2nd respondents enjoy restrictive immunity under the Privileges and Immunities Act and the Vienna Convention on the Law of Treaties, 1961

7. It is submitted for the 1st and 2nd respondents that they enjoy immunity in view of Article V (1) and (2) of the Host Agreement of 29.12.1994. It is further submitted that the immunity specifically extends to the 2nd respondent because Article XIII of the Host Agreement provides thus, "The Government shall grant to the Director General, and any other official acting on his/her

behalf during his/her absence from Kenya, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. The same shall be accorded in respect of his/her spouse and minor children.” The 2ⁿ respondent being a Director-General of the 1st respondent, it is submitted, is clothed with immunity from legal process in Kenya. The immunity is said to be reinforced by 4th Schedule to the Privileges and Immunities Act which accords the 2nd respondent the privileges and immunities, exemptions and facilities accorded to diplomatic envoys under international law pursuant to the said Host Country Agreement.

8. It was also submitted for the 1st and 2nd respondents that the Privileges and Immunities [The International Livestock Research Institute (ILRI)] Order as Legal Notice No.2 of 2001 applies section 9 of the Privileges and Immunities Act Cap 9.
9. The submissions for the 1st and 2nd respondent are that the 1st respondent has immunity from every form of legal process and cannot be subjected to the jurisdiction of the Honourable Court unless the 1st respondent has expressly waived such immunity.

10. In **Kandie v Ba & another (Petition 2 of 2015)**
[2017] KESC 13 (KLR) (28 July 2017) (Judgment) Neutral
citation: [2017] KESC 13 (KLR) the Supreme Court (PM
Mwilu, DCJ & VP, MK Ibrahim, JB Ojwang, SC Wanjala & I
Lenaola, SCJJ) with respect to section 9 of the Immunities and
Privileges Act, the Supreme Court held thus,

“62. We take the position that, the provisions of section 9 above
are discretionary in nature, in that the Minister may by order,
confer immunities and privileges on certain kind of persons in
particular organizations. Most importantly, and in the present
case, the immunities and privileges of the respondents are clearly
set out in the host country agreement, the memorandum of
understanding, and the [Charter](#) which as already stated, are
treaties and conventions that Kenya has ratified, and now form
part of the laws of Kenya. The [Privileges and Immunities](#)
[Act](#) must, therefore, be read together with these instruments for
their full effect and tenor, and none should override the other.
They are both lawful instruments of privilege, and a reliance on
one as against the other does not negate the immunities and

privileges conferred by one of them, in this case, the above instruments.” And further, “In a nutshell, the immunity granted to the respondents is limited both by international law, and by the instruments of law that grant them such immunity as we have explained above.”

11. By that binding judgment and holding of the Court, the Court returns that the immunity granted to the 1st respondent and the 2nd respondent was not absolute and its scope and effect is discernible particularly from the manner the Cabinet Secretary framed the Privileges and Immunities [The International Livestock Research Institute (ILRI)] Order as Legal Notice No.2 of 2001 and the provisions of the Host Country Agreement between the 1st respondent and the 4th respondent, the Ministry, dated 29.12.1994. It is the petitioner’s case that when he brought his claim to the Ministry of Foreign Affairs negotiations collapsed as there was no settlement and the Ministry declared that the petitioner was at liberty to invoke the jurisdiction of a court of competent jurisdiction by filing appropriate legal proceedings. It then appears to the Court that the petitioner has

filed the instant petition in furtherance of that ministerial declaration arrived at within the ministerial discretion that conferred the immunity in exercise of the discretion in section 9 of the Act so that the declaration the matter moves to court is a continuum of that statutory discretion exercised and reasonably so under Article V (1) of the Host Agreement that, in default of a negotiation leading to a settlement, the dispute may move to Court by that Ministerial declaration.

12. The Court further finds that the dispute in the petition is about employment and labour claims as well as claims to enforce the Bill of Rights as pleaded for the petitioner. In **Embassy of Sweden Nairobi v Kusewa & another (Civil Appeal 345 of 2017) [2020] KECA 954 (KLR) (24 April 2020) (Judgment) Neutral citation: [2020] KECA 954 (KLR)**, the Court of Appeal (W Karanja, HM Okwengu & F Sichale, JJA) held as follows,

“43. The next issue for us to address is whether the doctrine of restrictive immunity is applicable to employment contracts. A look at the comparative jurisprudence we have analysed above

shows that employment contracts have been held to belong to the Private Law domain and State Immunity does not therefore apply. See **Cudak v. Lithuania (supra); Dube and Another vs American Embassy and another** and **Sebina vs South Africa High Commission (supra)**. Our courts have also adopted that approach as can be seen in the **Karen Njeri case (supra)**. We also note that the respondents were locally employed and their contracts of employment were therefore subject to the jurisdiction of the Employment and Labour Court.

44. To that extent therefore, we find that the learned Judge did not err in her conclusion that ELRC had the requisite jurisdiction to entertain the labour dispute in respect of the parties herein. Accordingly, we find this appeal devoid of merit and dismiss it with costs to the respondents.” The Court finds that immunity would not apply to this dispute involving private rights and not or rather than the sovereign or public interests for which a near absolute immunity would likely be available than not.

13. Again, in Embassy of the Kingdom of Belgium in Nairobi v Mande (Civil Appeal 184 of 2019) [2025] KECA 214 (KLR) (7 February 2025) (Judgment) Neutral citation: [2025] KECA 214 (KLR) the Court of Appeal (PO Kiage, LA Achode & GV Odunga, JJA), the Court held thus,

“12.The issue that falls for determination before us in this appeal is simply whether the learned trial Judge erred in not making a conclusive finding on the issue of jurisdiction and whether it ought to have found that it had no jurisdiction to entertain the respondent’s claim against the appellant.

14. It is not in doubt that the appellant’s claim was based on a contract of employment between the appellant and the respondent. It is also not in doubt that in terminating that contract the appellant invoked the provisions of the local legislation being section 44(1) (g) of the [Employment Act](#), 2007. The respondent’s challenge to his summary dismissal in effect brought the matter under the ambit of fair labour practices. The legal provisions dealing with diplomatic immunity are geared

towards the limitation of some of the rights such as access to justice where rights including the right to fair labour practices which is recognised in Article 41 of [the Constitution](#) are alleged to have been violated. The Supreme Court, while dealing with the limitation of rights expressed itself in the case of **Karen Njeri Kandie v Alassane Ba & Another [2017] eKLR (the Shelter Afrique Case)** as hereunder:

“Kenyan courts have previously analysed the limitation test enshrined in Article 24 of [the Constitution](#); for example, in the case of **Attorney General & Another vs Randu Nzai Ruwa & 2 Others Civil Appeal No. 275 of 2012; [2016] eKLR**, the Court of Appeal observed that the rights and freedoms in the Bill of Rights can only be limited under Article 24 of [the Constitution](#), and neither the State nor any State functionary can arbitrarily do so. The Court further endorsed the holding of the trial court with respect to Article 24, and stated thus:

‘Our reading of Article 24 (1) is that not only must the law limiting a right or fundamental freedom pass constitutional muster but also the manner in which the law is effected or

proposed. So both the law prescribing the limitation and the manner in which it is acted upon must satisfy the requirement of Article 24.’ Further, in the High Court case of **Union of Civil Servants & 2 others vs Independent Electoral and Boundaries Commission (IEBC) & Another H. C. Petition No. 281 of 2014 & 70 of 2015; [2015] eKLR**, the Court examined Article 24 and stated that the test to be applied is a strict and elaborate scrutiny based on the ‘reasonability and justifiability’ test. The learned Judge thus stated:

‘46.... once a limitation of a fundamental right and freedom has been pleaded as has happened in the present Petition, ..., then the party which would benefit from such a limitation must demonstrate a justification for the limitation. In demonstrating that the limitation is justifiable, such a party must demonstrate that the societal need for the limitation of the right outweighs the individual’s right to enjoy the right or freedom in question; **See S vs Zuma & Others (1995)2 SA 642(CC)**. [Emphasis added].”

And the Court of Appeal in the cited decision concluded,

“19. In other words, a determination on whether or not a court has jurisdiction to entertain a matter may depend on the establishment of certain facts. If at the time the court is called upon to make a determination on the issue, the facts are not clear, the court cannot be expected to make a determination in the dark. The only reasonable course is for the court to postpone its determination on the issue pending the establishment of all the necessary facts so as not to find itself in a situation where it holds that it has jurisdiction and subsequently, when all the facts are placed before it, to realise that it in fact had no jurisdiction.”

15. Taking into account the binding guidance by the Court of Appeal, in the instant case the parties have made considerable factual disputes about whether the 1st and 2nd respondent did waive the immunity or not when they subjected themselves to the criminal justice system and alleged actions by the 5th to 9th respondents and at the instance of the 1st and 2nd respondents. To that extent, it appears to the Court that the preliminary objection thereby fails to pass the test that a proper preliminary objection be based upon a pure point of law founded upon undisputed

pleaded facts. With such disputed facts, the issue of whether there was a waiver or no waiver of immunity and whose determination would one way or the other impact on the Court's jurisdiction is better deferred for determination in the judgment after a full hearing and with the benefit of full evidence on the disputed facts.

16. In view of the findings the preliminary objection must fail with costs in the cause. Needless to state, the 2nd interested party is a necessary party for the efficient, effective and complete determination of the issues in dispute.

17. While making the findings the Court has as well considered the submissions filed for 4th to 9th respondents which essentially supported those for the 1st and 2nd respondent. The Court has found that it has jurisdiction at this stage despite the alleged immunity and the issue whether the immunity was waived can be determined only after a full hearing on the disputed facts.

The application and the preliminary objection for the 1st and 2nd respondents are hereby dismissed with costs in the cause; and, parties

to take directions towards the expeditious determination of the main disputes herein.

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

**BYRAM ONGAYA,
PRINCIPAL JUDGE**