

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

**ELRC PETITION NO. E134 OF 2025**

*(Before Hon. Lady Justice Hellen Wasilwa, J)*

<b>ROGERS PETITIONER</b>	<b>MASIBO</b>	<b>LUUMUMBA.....</b>	<b>1<sup>ST</sup></b>
<b>WILLIAM PETITIONER</b>		<b>KIBUE.....</b>	<b>2<sup>ND</sup></b>
<b>JOYCE PETITIONER</b>	<b>WAWIRA</b>	<b>GICHOVI.....</b>	<b>3<sup>RD</sup></b>
<b>SIMON PETITIONER</b>	<b>NDARWA</b>	<b>MWANGI.....</b>	<b>4<sup>TH</sup></b>
<b>HUSSEIN PETITIONER</b>		<b>ALI.....</b>	<b>5<sup>TH</sup></b>
<b>JOHN PETITIONER</b>	<b>MUTUA</b>	<b>KATUNGIU.....</b>	<b>6<sup>TH</sup></b>
<b>JOSEPH PETITIONER</b>	<b>WAMBUA</b>	<b>NAONYE.....</b>	<b>7<sup>TH</sup></b>
<b>TITUS PETITIONER</b>	<b>KWEMOI</b>	<b>MNYOLMO.....</b>	<b>8<sup>TH</sup></b>
<b>EDWIN PETITIONER</b>		<b>MANYEKI.....</b>	<b>9<sup>TH</sup></b>
<b>JOSEPH PETITIONER</b>	<b>MACHARIA</b>	<b>IMPWI.....</b>	<b>10<sup>TH</sup></b>
<b>ABDUL PETITIONER</b>	<b>WAKO</b>	<b>BILI.....</b>	<b>11<sup>TH</sup></b>
<b>ELIAS PETITIONER</b>	<b>MWANJE</b>	<b>BAYA.....</b>	<b>12<sup>TH</sup></b>
<b>DOMINIC PETITIONER</b>	<b>MURIUNGI</b>	<b>MUGAMBI.....</b>	<b>13<sup>TH</sup></b>

<b>BENJAMIN PETITIONER</b>	<b>KIPKURUI</b>	<b>ROTICH.....</b>	<b>14<sup>TH</sup></b>
<b>ELPHAS PETITIONER</b>	<b>KIBET</b>	<b>NGETICH.....</b>	<b>15<sup>TH</sup></b>
<b>HENDRIETTA PETITIONER</b>		<b>MKALA.....</b>	<b>16<sup>TH</sup></b>
<b>BENARD PETITIONER</b>		<b>KWARAT.....</b>	<b>17<sup>TH</sup></b>
<b>DENNIS PETITIONER</b>	<b>KOSKEI</b>	<b>KIKWAI.....</b>	<b>18<sup>TH</sup></b>
<b>JULIUS PETITIONER</b>	<b>MUBURI</b>	<b>MWANGI.....</b>	<b>19<sup>TH</sup></b>
<b>WILLIAM PETITIONER</b>	<b>KIPLANG'AT</b>	<b>RULO.....</b>	<b>20<sup>TH</sup></b>
<b>JOSEPHINE PETITIONER</b>		<b>ANDIA.....</b>	<b>21<sup>ST</sup></b>
<b>ALEX PETITIONER</b>	<b>TANIN</b>	<b>LOKOMAN.....</b>	<b>22<sup>ND</sup></b>
<b>LEAH PETITIONER</b>		<b>KAJUJU.....</b>	<b>23<sup>RD</sup></b>
<b>VS</b>			
<b>KENYA RESPONDENT</b>	<b>REVENUE</b>	<b>AUTHORITY.....</b>	

### **JUDGMENT**

- 1 By a Petition dated 16<sup>th</sup> June 2025, the Petitioner prayed for judgment in their favour against the Respondent for: -
- a. A declaration that the Respondents' unilateral decision to summarily terminate the secondment of the Petitioners by various letters dated 31<sup>st</sup> January, 2023 which resulted in sudden reduction of their salaries and other work benefits was unprocedural, unlawful and unconstitutional as it involved unfair or*

- discriminatory treatment and amounted to unfair and unlawful termination from employment;*
- b. Consequent to a) above, the Respondent do pay the Petitioners general and aggravated damages equal to four (4) months' gross monthly salary as at the time of the termination of the Contracts;*
- c. The Respondent to pay costs of this Petition;*
- d. Any other or further relief that this Honourable Court deems fit and just to grant.*

### **Petitioners' Case**

- 2 The Petitioners aver that at the invitation of the Respondent and in conjunction with their employer, the National Police Service, they applied for the jobs offered by the Respondent.
- 3 The Petitioners aver that it went through a competitive recruitment process and were successful and duly employed at various stations of the Respondent.
- 4 They aver that they received letters of secondment to the Respondent from the National Police Service at first for a period of three (3) years from the date of the Contract and later so extended for a period of two (2) years.
- 5 The Petitioners aver that the letters of secondment set out the terms of service being: remuneration packages relating to the KRA Grades to which a Petitioner qualified; KRA would contribute 31% of Petitioner's National Police Service salary towards the Kenya Police Pension Scheme;

mandatory enrolment into the National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF); medical cover for each Petitioner, spouse and four (4) declared children; group Personal Accident insurance cover for the duration of the Secondment; 30 pro-rated working days paid leave per year of service; annual leave allowance; eight (8) work hours per day; and that the Petitioners would be bound by the said Respondents Code of Conduct and Ethics which was issued to the Petitioners.

- 6 The Petitioners aver that on 3<sup>rd</sup> February 2023, they received notices of termination of their secondment dated 31<sup>st</sup> January 2023 from the Respondent without offering any reasons and following due process.
- 7 The Petitioners aver that the Respondent offered to pay the Petitioners only their January salaries and allowance. This was despite the fact the Petitioners were already working in the month of February, 2023.
- 8 The Petitioners aver that vide notices dated 17<sup>th</sup> February, 2023 they were redeployed to the National Police Service in various parts of the country under similar terms as before the secondment.
- 9 This action caused them serious unplanned cost of relocation and even housing at no fault of theirs, thus, they had to lose all their payments within the month of February, 2023.

- 10 It is the Petitioner's case that the termination of their secondment was harsh, unilateral, unprovoked and has subsequently put them to grave loss as they now earn less than had been during the secondment and further lost all their benefits secured during their secondment.
- 11 They aver that they have had to adjust their lives and those of their families to the lower salaries contrary to their legitimate and agreed upon salary expectations during the secondment.
- 12 The Petitioners aver that due to the sudden unprovoked termination of their secondment, they are unable to access loans which ordinarily are and were pegged on the salaries being enjoyed during such secondment. This has put them in serious financial and economic difficulties yet they were not the authors of the termination.
- 13 The Petitioners aver that Respondent did not follow due procedure when terminating the secondment in violation of Articles 27, 232 and 236 of the Constitution.
- 14 They assert that they were neither issued nor given any justification or reasons for the termination. Therefore, the termination was irregular in violation of Articles 41 of the Constitution and Section 4 of the Fair Administrative Action.
- 15 The Petitioners aver that unilateral decision to terminate their secondment without prior notice offended Articles 232 and 236 of the Constitution. They contend that they

were removed from distinct public offices without due observance of laid down procedures.

- 16 The Petitioners aver that the Kenya Revenue Authority Act provides for secondment of officers into the Respondent's employment whose termination can only be as per the terms of secondment. Their secondment was for a specified period, thus, the arbitrary termination effectively altered the Petitioners' terms of service without any justification.
- 17 The Petitioners aver that the Respondent did not notify and/or accuse them of any gross misconduct or repeated misdemeanours and the neither were they paid salary in lieu of notice. This was in violation of KRA Code of Conduct and Ethics and Articles 27 and 41 of the Constitution.
- 18 It is the Petitioners' case and in view of the specified period of secondment, they had a legitimate expectation and had settled and projected their financial expectations and which the summary termination callously violated.

### **Respondent's Case**

- 19 In opposition to the petition, the Respondent filed a replying affidavit sworn by Peter Kiambi, an officer working in the Respondent's Human Resource Division, as an Assistant Manager.
- 20 The Respondent avers that is established under the Kenya Revenue Authority Act, Cap 469 Laws of Kenya, as an

agency of the Government for the collection and receipt of all revenue. Under Section 5(2) of the Act, it is required to administer and enforce all provisions of the written laws set out in part 1 & 2 of the first schedule of the KRA Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those Laws.

- 21 The Respondent avers that the Petitioners are members of the National Police Service who were seconded to its Investigations and Enforcement Department for a period of three years from the date of the contract and others whose secondment contracts had been extended for a period of two years after the lapse of their first three years contract. Their secondment contracts were terminated on 31<sup>st</sup> January 2023 before lapse of the contractual period.
- 22 The Respondent avers that the Petitioner's secondment were terminated in line with their contracts which hold that "The secondment contract will be terminated on account of disciplinary cases or other grounds."
- 23 The Respondent further avers that the termination was also in line with Section 42 (3) of the Public Service Commission Act, which provides that: *"Where it is no longer necessary for a public officer on secondment to remain seconded and the secondment period has not lapsed, the public officer shall be entitled to revert to the public office held before the secondment."*
- 24 The Respondent asserts that the release of the Petitioner's to the National Police Service was fair and it has

demonstrated that the Petitioners have been redeployed by the National Police Service in line with their policies and procedures, therefore, it cannot be held accountable for actions by the National Police Service.

- 25 It is the Respondent's case that the Petitioners were released back to the Kenya Police Service thus it had no obligation into their placement and or posting.
- 26 The Respondent avers that is the essence of secondment that the Petitioners were to return and resume their employment with the Kénya Police Service upon expiry and/or termination of their secondment contract, where they would continue to receive salary as per their terms of employment, therefore, this claim is baseless and unfounded.
- 27 It avers that upon the release of the Petitioners back to the Kenya Police Service, the reduction in salary and alleged loss of benefits that they enjoyed during secondment tenure cannot form a valid or legitimate claim, as it was temporary benefit applicable during the period. Further, they are enjoying salary and benefits as per their terms of employment with the Kenya Police Service.
- 28 The Respondent asserts that the Petitioners were aware as per the secondment letter that the secondment could be cancelled or terminated and better still no loss of job as they are employees of the Kenya Police Service.

- 29 The Respondent avers that the termination of the Petitioners' secondment contract was regular, lawful and fair as the termination was done by invoking the provision of their secondment contract that provided for termination on disciplinary or other grounds.
- 30 The Respondent avers that the release of the Petitioners who were on secondment back to Kenya Police Service did not amount to unfair administrative action nor did it amount to violation of Article 41 on fair labour practice as read together with Section 4 of the Fair Administrative Action Act by the Respondent.
- 31 The Respondent avers that the Deputy Commissioner - Human Resource exercised her administrative responsibility to communicate the decision by the Respondent to terminate the Petitioner's secondment contract since it was done in line with the provisions of the letter of secondment. This does not amount to violation of fair labour practices under Articles 232 (2) and 236 of the Constitution.
- 32 It is the Respondent's case that the secondment of the Petitioners from the Kenya Police Service to the Respondent did not create a new employment contract but temporary engagement, therefore, their release back to their principal employer cannot be deemed to be removal from office.
- 33 The Respondent avers that the Petitioners contract provided for termination on disciplinary or other grounds,

therefore, it acted within the terms of secondment. The administrative decision was not in breach of Section 22 (4) of the Kenya Revenue Authority Act that recognizes secondment of officers to the Respondent's offices.

34 The Respondent contends that it did not arbitrarily vary the Petitioner's terms of employment without justification as the release of the Petitioners back to the National Police Service was in line with their contract that provided terminated of secondment on disciplinary or other grounds.

35 It is the Respondent's case that the petitioner's secondment were not terminated on account of any misconduct or repeated misdemeanour but it was a release back to the principal employer, the Kenya Police Service, in line with the provisions of the letter of secondment. Therefore, the allegation that the said termination was discriminatory, contrary to Article 27 and was in violation of Clause 8.6 of the Respondent's Code of Conduct is unfounded and baseless.

36 The Respondent avers that the Petitioners' contracts were terminated to allow the Respondent engage the National Police Service for a framework on support and collaboration in the area of law enforcement and security related activities.

37 The Respondent avers that the release of the Petitioners back to Kenya Police Service was justified and lawful and no injustice suffered or likely to be suffered.

38 The Respondent avers that the Petitioner's and the affected officers were fully aware that their contracts provided for termination on disciplinary or other grounds which is clearly stipulated in their letters of secondment. Therefore, the allegation that the administrative decision by the Respondent failed to take into account their legitimate expectation considering that the termination of their secondment did not amount to termination of employment with the Kenya Police Service holds no water.

### **Petitioners' Submissions**

39 The Petitioners placed reliance in [Otieno & 3 others v Kenya Revenue Authority \[2023\] KEELRC 2668 \(KLR\)](#) wherein the Justice Byram Ongaya entered judgment for the petitioners and the 37 other affected officers, against the respondent for: *"The declaration that the respondent's unilateral decision to summarily terminate the secondment of the petitioners and affected officers by various letters dated 31<sup>st</sup> January, 2023 which resulted to sudden reduction of their salaries and other work benefits was un-procedural, unlawful, and unconstitutional as found herein by the Court; as it involved unfair or discriminatory treatments and amounted to unfair and unlawful termination from employment."*

40 The Petitioner submitted that the Respondent dissatisfied with the court's decision escalated to the Court of Appeal in ***Kenya Revenue Authority v Otieno & 3 others***

**[2024] KECA 1959 (KLR)** by a unanimous decision of the three judge bench of Justices P. O. Kiage, S. Ole Kantai and L. Achode, the court held: “ *I concur with the learned Judge that unquestionably, the appellant was bound by the terms of the secondment contract and its failure to explain the grounds for termination leads to the inescapable conclusion that the termination was unfair, in line with section 45(2) of the Employment Act.*”

41 It is the Petitioner’s submission that the facts of the instant petition, and the aforecited High Court and later Court of Appeal cases are the same. The Petitioners and Respondents in the High Court and Court of Appeal cases above respectively were seconded from National Police Service to the Respondent herein. Their secondment was terminated by same letter dated 31<sup>st</sup> January 2023. No facts have changed at all between the circumstances that faced the Petitioners in the earlier alluded case and the current Petitioners before the Court. Thus, this Court is bound by the judgment of the Court of Appeal.

42 The Petitioner submitted that while seeking for a declaration that the termination was un-procedural, unlawful, unconstitutional, unfair and discriminatory, have taken guidance from the Court of Appeal decision and sought from this court damages equal to four (4) months gross salary from the Respondent.

43 I have examined the evidence and submissions of the parties herein. The petitioners contention is that the

respondents acted in breach of their constitutional rights by terminating their secondment contracts with them abruptly and returning them to the National Police Service without notice thus infringing on their economic rights due to reduction in salary.

44 The petitioners aver that the termination of the secondment was harsh, unilateral, unprovoked and put them to gross loss as they had to adjust their lives and those of their families due to unplanned salary adjustments.

45 They aver that they were put through unplanned relocation and even housing for no fault of theirs. It is indeed undisputed that the secondment contracts were abruptly terminated. Despite the fact that the respondents had a right to terminate the said contracts, due notice was necessary to allow for planning and allow the petitioners arrange their families for relocation and change in salary fall given the commitments already made such as school for children, housing payments, loans etc.

46 The treatment of the petitioners by the respondent was indeed harsh and inhumane and in breach of their constitutional rights in particular fair labour rights under article 41 of the constitution inhumane and degrading treatment under article 28 of the constitution and Fair Administrative Action under article 47 of the Constitution. The respondents had subjected other officers in same category of the petitioners in such degrading manner as **in KELR (2668 (KLR) Otieno and 3 Others vs KR**

**(2023)** where the court found for the petitioners and awarded them damages. The ELRC's decision was upheld on appeal in **KRA Vs Otieno & 3 Others (2024) Keca 1959 (Klr)** where the Court of Appeal found the termination was unfair in line with section 45(2) of the Employment Act.

47 This court is bound by the finding of the Court of Appeal in the above cited case and in which case I return a verdict that the

petitioners herein were unfairly treated by the respondent who abruptly terminated their secondment contracts without notice.

48 In the circumstances, I do find for the petitioners and taking que of the Court of Appeal's decision, I award each petitioner 4 months' salary on damages plus costs of this petition and interest at court rates with effect from the date of this judgment.

**Dated, Signed and Delivered Virtually at Nairobi this 15<sup>th</sup> Day of January, 2026.**

**HELLEN WASILWA  
JUDGE**

