



**Agwenyi v Parliamentary Service Commission & another (Petition
E244 of 2025) [2026] KEELRC 663 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELRC 663 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E244 OF 2025
HS WASILWA, J
MARCH 5, 2026**

BETWEEN

ZACHARY GICHANA AGWENYI PETITIONER

AND

PARLIAMENTARY SERVICE COMMISSION RESPONDENT

AND

THE NATIONAL ASSEMBLY PROPOSED RESPONDENT

RULING

1. The Proposed 2nd Respondent/Applicant filed a Notice of Motion dated 9th January 2026 seeking orders that: -
 - i. Spent.
 - ii. That This Honourable Court be pleased to join the Applicant as a the 2nd Proposed Respondent in this petition.
 - iii. Upon the grant of the aforesaid prayer, the Applicant be granted leave to respond to the petition.
 - iv. Costs of this application be provided for

Proposed 2nd Respondent/Applicant's Case

2. The Applicant avers that the office of the Chief Serjeant-at-Arms is a critical constitutional and administrative office within the National Assembly, charged with responsibilities that include service to the Speaker, Members of Parliament, the Clerk and staff of the Assembly, as well as the performance of chamber, ceremonial, security and safety duties necessary for the general welfare of Parliament.



3. It is the Applicant's case that the Chief Sergeant at Arms plays an indispensable role in ensuring the effective functioning of the National Assembly by safeguarding Members and staff, securing parliamentary facilities, facilitating House proceedings through implementation of the Speaker's directives, maintaining order and housekeeping standards during sittings, overseeing custody of the mace, and undertaking additional parliamentary duties as may be required.
4. The Applicant avers that the present Petition directly implicates the order, functioning and operational integrity of the National Assembly, which forms the core subject of the dispute.
5. Consequently, the Applicant contends that the issues raised cannot be effectively determined without the participation of the National Assembly, whose constitutional mandate and institutional operations stand to be directly affected by the orders sought.
6. The Applicant further avers that the reliefs sought by the Petitioner are likely to impact the rights, functions and day to day operations of the National Assembly. In this regard, the Applicant asserts that it is both just and equitable that the National Assembly be joined to the proceedings in order to safeguard its institutional interests and ensure that any orders issued by the Court are made with full appreciation of their operational consequences.
7. The Applicant avers that it seeks to place before the Court substantive and material information regarding the job requirements, internal office protocols, and the rationale underpinning the minimum qualifications applicable to the office of Chief Serjeant at Arms. This information will assist the Court in appreciating the unique nature, responsibilities and functional demands of the office within Parliament.
8. It is the Applicant's case that that the National Assembly is a proper and necessary party to the Petition, as it is directly affected by the subject matter and the reliefs sought. The principles of natural justice require that all parties whose rights and interests may be adversely affected be afforded an opportunity to be heard.
9. The Applicant avers that its joinder is necessary to enable the Court to effectively, conclusively and completely adjudicate upon and settle all questions arising in the Petition.
10. The Applicant avers that it is ready and willing to adhere to this Court's orders and undertakes to comply with any directions made by the court regarding the filing and service of responses and other necessary documents without any undue delay.
11. The Applicant avers that no prejudice shall be occasioned to the Petitioner and the other parties herein if the orders sought in this application are granted; however, if the Applicant is denied a chance to participate in these proceedings, it shall stand condemned unheard, given the nature of the orders sought.
12. The Applicant avers that it is in the interest of justice and the overriding objectives of this Court that the Applicant be joined herein as a Respondent.

Petitioner/Respondent's Case

13. In opposition to the Proposed 2nd Respondent/Applicant's application, the Petitioner filed a replying affidavit dated 20th January 2026.
14. The Petitioner/Respondent avers that the roles and functions of the National Assembly are derived from Article 95 of *the Constitution*.



15. Under Article 95 of *the Constitution*, the National Assembly represents the people of the constituencies and special interests; deliberates on and resolves matters of concern to the people; enacts legislation; determines the allocation of national revenue between the levels of government; appropriates funds for expenditure by the national government and other state organs; exercises oversight over national revenue and expenditure; reviews the conduct in office of the President, the Deputy President and other State officers and initiates their removal where applicable; exercises oversight over State organs; and approves declarations of war and extensions of states of emergency.
16. It is the Petitioner/Respondent's case that, notwithstanding the above constitutional functions, the National Assembly does not have any role or mandate in the recruitment, appointment, or placement of the position of Chief Sergeant at Arms, and therefore lacks the requisite nexus, competence, or justification to be enjoined in the present proceedings.
17. The Petitioner/Respondent avers that the constitutional mandate to advertise, recruit, and set salaries and wages for parliamentary staff vests in the Parliamentary Service Commission, and not the National Assembly.
18. He avers that although the National Assembly has representatives sitting in the Parliamentary Service Commission, any decision made by the Commission is collective and attributable to the Commission as an independent constitutional entity, and not to the National Assembly in its institutional capacity.
19. It is the Petitioner/Respondent's position that the Petition does not directly relate to, nor does it interfere with, the constitutional functions of the National Assembly as set out under Article 95 of *the Constitution*.
20. The Petitioner/Respondent avers that the vacancy in issue arises within the Parliamentary Service Commission and that any determination by the Court will not in any way affect or impede the constitutional roles of the National Assembly.
21. The Petitioner/Respondent avers that the Petition concerns a recruitment process which ought to be free, fair, transparent, and devoid of any undue influence, and which process the Respondent is constitutionally mandated to undertake.
22. It is the Petitioner/Respondent's case that the intended 2nd Respondent has failed to demonstrate any prejudice it stands to suffer, given that its mandate is clearly delineated in *the Constitution* and is not implicated by the issues raised in the Petition.
23. The Petitioner/Respondent avers the Application is mischievous, vexatious, and a calculated attempt to divert the Court from the substantive issues raised in the Petition, with the intent of defeating its purpose.
24. The Petitioner/Respondent avers that the application is an abuse of the court process and ought to be dismissed with costs.

Proposed 2nd Respondent/Applicant's Submissions

25. The Applicant submitted that the issues raised in the Petition directly affect the rights, interests, and operations of the National Assembly, and that joinder is necessary to enable it to defend those interests and to assist the Court in the effective determination of the dispute.
26. The Applicant submitted that Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules), defines a



respondent as a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom.

27. The Applicant submitted that a party whose interests stand to be affected by the outcome of proceedings is entitled to seek joinder in order to protect its rights. The procedure for joinder of parties is provided in Rule 5(d)(ii) of the Mutunga Rules, which empowers the Court, at any stage of proceedings, to add as a party any person “who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter.”
28. The Applicant submitted that Rule 5 (d) (ii) of the Mutunga Rules reflect the provisions of Order 1 Rule 10(2) of the Civil Procedure Rules on joinder of parties. It cited the Court of Appeal decision in *Merry Beach Limited v Attorney General & 18 others* [2018] eKLR, where it was observed that Order 1 Rule 10(2) of the Civil Procedure Rules is in pari materia with Rule 5 (d) (ii) of the Mutunga Rules. Therefore, the Applicant submitted that joinder in both matters raising constitutional issues and civil matters is similar.
29. The Applicant further relies on *Civicon Limited v Kivuwatt Limited & 2 others* [2015] KECA 588 (KLR), where the Court of Appeal observed as follows, as relates to Applications grounded on Order 1 Rule 10(2) of the Civil Procedure Rules: “Having carefully considered the respective positions of the parties to this dispute, this is our view of the appeal. Under Order 1 of the Civil Procedure Rules, the trial court has wide discretionary powers to make necessary amendments as to the parties to a suit by adding, substituting or striking them out and to make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute between them. The court has a separate, independent duty from the parties themselves to ensure that all necessary and proper parties, and no others, are before it so that it may effectually and completely determine and adjudicate upon all matters in dispute.”
30. The Applicant submitted that the Chief Sergeant at Arms is the head of the office of the Serjeant-at-Arms, which is an office in the National Assembly, reporting to the Clerk of the National Assembly. The Clerk of the National Assembly, therefore, supervises the Chief Serjeant at Arms and plays a major role in assessing the National Assembly’s staffing needs, including advising on the required qualifications for a particular position. The Clerk of the National Assembly plays a crucial role in the recruitment and supervision of staff in the National Assembly.
31. The Applicant submitted that Section 28 (c)(i) provides that the Clerk of the respective House retains the overall management of the staff under their respective control pursuant to Article 128(2) of *the Constitution*. This staff management responsibility includes the responsibility to advise the Commission on matters relating to, among others, the appointment, promotion, and discipline of the members of staff.
32. The Applicant submitted that the Clerk of the National Assembly plays a key role in the recruitment and management of the staff under his supervision, which includes the Chief Serjeant at Arms. The Clerk’s advisory role on the appointment of staff includes advice on the staffing needs, the required qualifications of a suitable officer in terms of academic achievements and technical skills. These qualifications are determined by the roles, responsibilities and duties an officer is required to undertake.
33. It is the Applicant’s submission that while the Parliamentary Service Commission has the overall responsibility for recruitment of parliamentary staff, the Clerks of the National Assembly and the Senate play a critical role in assessing the staffing needs and advising on the technical skills and qualifications an officer must possess. This is done as part of the Clerks’ responsibility to manage the affairs of their respective chambers, which includes ensuring proper staffing.



34. The Applicant submitted that Petition herein challenges the recruitment of the Chief Serjeant at Arms based on the technical skills and qualifications as advertised. While the Commission is responsible for the recruitment, the Clerk of the National Assembly is responsible for advising on the required technical skills and qualifications based on the office's needs.
35. It is therefore the Applicant's submission that the Petition directly challenges these qualifications and technical requirements. As such, the National Assembly is a necessary party in these proceedings to provide information on the reasons why the Clerk of the National Assembly advised the Commission to advertise for the recruitment of staff with certain technical skills and qualifications.
36. The Applicant rejected the argument that representation of the National Assembly within the Parliamentary Service Commission suffices. It submitted that Commissioners are required to act independently and do not represent or safeguard the institutional interests of the National Assembly. Further, the Clerk of the National Assembly, who is the accounting officer and custodian of day-to-day management, does not sit in the Commission and therefore requires a forum to present the National Assembly's position.
37. The Applicant submitted that failure to enjoin the National Assembly would occasion it prejudice and adversely affect the execution of its constitutional mandate, as decisions affecting staffing directly impact its ability to function effectively. Further, the National Assembly has a constitutional right to be heard under Article 50 of *the Constitution* in a Petition that seeks to challenge the technical skills and qualifications the Chief Serjeant at Arms in the National Assembly is required to have to effectively discharge the duties of that office.
38. On the exercise of judicial discretion, the Applicant submitted that the Court of Appeal in *Civicon Limited [Supra] R*, explained the extent of the discretion of the Court in Applications for joinder as follows: "Again the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined."
39. The Applicant further relied in *Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 others [2014] eKLR*: "Judicial discretion is always exercised judiciously and for reasons which are stated. The aims that should be encapsulated in the reasons given for the refusal to exercise discretion are meant to further the cause of justice, and to prevent the abuse of the court process. Judicial discretion is never exercised capriciously or whimsically."
40. It is the Applicant's submissions that it has demonstrated sufficient interest in the subject matter of the Petition, that its presence is necessary for the complete and effectual determination of all issues raised, and that the Court should therefore exercise its discretion to allow the National Assembly to be joined as a Respondent to the Petition.

Petitioner/Respondent's Submissions

41. The Petitioner/Respondent submitted that the National Assembly should not be joined as a Respondent as it does not in any way have any role in the recruitment and placement of the position of the Chief Serjeant at Arms and thus lack competence. He contends that the petition is not about the functions of the National Assembly since the vacancy arises within the Parliamentary Service Commission.



42. It is the Petitioner/Respondent's submission that the National Assembly ensures democratic governance and protects the Constitution. It does not concern the recruitment or placement of the position of the Chief Serjeant at Arms.
43. The Petitioner/Respondent submitted that the Petition raised weighty constitutional issues under Article 232 of the Constitution which sets out the values and principles of public service including fairness, equity and merit-based appointments.
44. The Petitioner/Respondent submitted Parliamentary Service Commissions' role includes: ensuring efficient functioning of parliament; constituting offices, appointing and supervising staff; constituting offices, appointing and supervising staff; preparing estimates of expenditure for the parliamentary services; and cementing the independence of parliament from external control, subject to the Constitution.
45. It is the therefore the Petitioner/Respondent's case that the National Assembly does not have any role in the recruitment and placement of the Parliamentary Service including the office of the Serjeant at Arms and the same is embedded as the role of the Parliamentary Service Commission as provided under Article 127(6) of the Constitution as well as Sections 11 and 35 of the Parliamentary Service Act.
46. The Petitioner/Respondent submitted that the Applicant has not denied, violated, infringed a right or fundamental freedom neither has it outlined the prejudice that it may suffer as its mandate has been provided for under Article 95 of the Constitution. Further, the duties alleged as the roles of a clerk relates to the Clerk of the Parliamentary Service Commission and not the Clerk of the National Assembly to advise the Parliamentary Commission.
47. I have considered the averments and submissions of the parties herein. The applicant seek to be enjoined to these proceedings indicating the central role the applicant's office plays in parliamentary activities.
48. The respondents opposed the application indicating that National Assembly has no role in recruitment, appointment or placement of the position of the chief serjeant at arms indicating that this is the work of the Parliamentary Service Commission and not the National Assembly.
49. The applicant avers that the issues in the petition directly affect the rights interests and operation of the National Assembly and their joinder is therefore necessary.
50. I have looked at this petition and the prayers sought which touches in recruitment process for the position of Chief Serjeant at Arms of the National Assembly. The orders sought directly fall under the Parliamentary Service Commission whose role is defined under article 127 of the Constitution which states as follows:
- 127.
- (1) There is established the Parliamentary Service Commission.
 - (2) The Commission consists of—
 - (a) the Speaker of the National Assembly, as chairperson;
 - (b) a vice-chairperson elected by the Commission from the members appointed under paragraph (c);
 - (c) seven members appointed by Parliament from among its members of whom—



- (i) four shall be nominated equally from both Houses by the party or coalition of parties forming the national government, of whom at least two shall be women; and
 - (ii) three shall be nominated by the parties not forming the national government, at least one of whom shall be nominated from each House and at least one of whom shall be a woman; and
 - (d) one man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.
- (3) The Clerk of the Senate shall be the Secretary to the Commission.
- (4) A member of the Commission shall vacate office—
- (a) if the person is a member of Parliament—
 - (i) at the end of the term of the House of which the person is a member; or
 - (ii) if the person ceases to be a member of Parliament; or
 - (b) if the person is an appointed member, on revocation of the person's appointment by Parliament.
- (5) Despite clause (4),
- when the term of a House of Parliament ends, a member of the Commission appointed under clause (2)
- (c) shall continue in office until a new member has been appointed in the member's place by the next House.
- (6) The Commission is responsible for—
- (a) providing services and facilities to ensure the efficient and effective functioning of Parliament;
 - (b) constituting offices in the parliamentary service, and appointing and supervising office holders;
 - (c) preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;
 - (d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and
 - (e) performing other functions— 73 *Constitution of Kenya, 2010*
 - (i) necessary for the well-being of the members and staff of Parliament; or
 - (ii) prescribed by National legislation.

51. Considering that the membership of the Parliamentary Commission above and the objective, it is apparent that the interests of the National Assembly are covered by the Speaker who chairs the Parliamentary Service Commission.



52. Adding the National Assembly as a party to these proceedings will not add any value to the proceedings. It is my finding that the application is therefore not merited and is dismissed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

HELLEN WASILWA

JUDGE

