

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

PETITION NO. E094 OF 2026

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE PETITIONERS AS ENSHRINED AND PROTECTED UNDER ARTICLES 20, 21, 22(1), 23, 24, 35 (1) (b), 35 (1) AND (2), 41 (1) AND (2), 47, 48, 258 AND 259 OF THE CONSTITUTION

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF THE NATIONAL CRIME RESEARCH CENTRE ACT CAP. 62 LAWS OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015

AND

IN THE MATTER OF THE PETITIONERS' LEGITIMATE EXPECTATION

AND

IN THE MATTER OF THE EMPLOYMENT ACT CAP 236

AND

IN THE MATTER OF THE UNILATERAL DECISION TO SUSPEND PAYMENT OF RESEARCH ALLOWANCE TO OFFICERS WORKING AT THE NATIONAL CRIME RESEARCH CENTRE

BETWEEN

STEPHEN MASANGO MUTETI.....1<sup>ST</sup> PETITIONER/APPLICANT

VINCENT ODHIAMBO OPONDO.....2<sup>ND</sup> PETITIONER/APPLICANT  
DICKSON GITONGA NJIRU.....3<sup>RD</sup> PETITIONER/APPLICANT  
PHYLIS                      WANJIKU                      MURIUKI.....4<sup>TH</sup>  
PETITIONER/APPLICANT  
ISAAH NYAMBARIGA NDEGE.....5<sup>TH</sup> PETITIONER/APPLICANT

VERSUS

THE NATIONAL CRIME RESEARCH CENTRE THE  
GOVERNING COUNCIL .....1<sup>ST</sup> RESPONDENT  
NATIONAL CRIME RESEARCH CENTRE.....2<sup>ND</sup>  
RESPONDENT  
DR. MUTUMA RUTEERE... ..3<sup>RD</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT  
THE SALARIES AND REMUNERATION  
COMMISSION (SRC).....1<sup>ST</sup> INTERESTED PARTY  
THE PUBLIC SERVICE COMMISSION (PSC).....2<sup>ND</sup> INTERESTED  
PARTY

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicant filed a petition together with application by way of Notice of Motion dated 7<sup>th</sup> March 2026 brought under Articles 20, 21, 22(1), 23, 24, 35 (1) (b), 35 (1) AND (2), 41 (1) AND (2), 47, 48, 258 AND 259 of the Constitution of Kenya; Rules 2, 3, 4, 5, 6, 7, 8, 13, 19, 23(1) & (2) and 24 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Sections 3A of the Civil Procedure Act and all enabling provisions of law] seeking for the Orders-
  - a. Spent
  - b. THAT pending inter parties hearing and determination of this Application and the Petition, this Honourable Court be pleased to issue a Conservatory Order suspending the implementation of the Human Resource instruments of December 2025 (Human Resource Policies and Procedures Manual, December, 2025, Organization Structure, December 2025 and Career Guidelines December 2025) through recruitment including interviewing, hiring and appointment to the various positions already advertised.\
  - c. THAT pending inter parties hearing and determination of this Application and the Petition, this Honourable Court be pleased to issue Conservatory Orders staying the implementation of the Internal Memoranda Referenced NCRC/CEO/COMM/VOL.III folios 17, 18, 34, 37 and 38, dated 19th December 2025 suspending the Petitioners/Applicants Research Allowance.
  - d. THAT pending inter parties hearing and determination of this Application and the Petition, this Honourable Court be pleased to issue Conservatory Orders reinstate the Research Allowance to the Petitioners/Applicants, pay suspended research allowance in arrears and to continue paying the Research Allowance.

- e. THAT pending inter parties hearing and determination of this Application and the Petition, this Honourable Court be pleased to issue an order restraining the 2nd and 3rd Respondents either by themselves, the 1st Respondent's staff or any person from interfering with Applicants/Petitioners' in the performance of their duties and functions as research officers within the 1st Respondent.
- f. THAT this Honourable court be pleased to issue such further order(s) as it may deem just.
- g. THAT the costs of this suit be awarded to the Petitioners/Applicants.

Grounds of the application

- 2. Vide Internal Memoranda Referenced NCRC/CEO/COMM/VOL.III folios 17, 18, 34, 37 and 38, the 2nd Respondent suspended the Petitioners Research Allowance ostensibly to seek the approval of the Salaries and Remuneration Commission, the 1st Interested Party herein, a decision that was communicated by the 3rd Respondent, who is the Director and Chief Executive officer of the 1st Respondent herein.
- 3. The suspended allowance is not only expressly provided for in the Petitioners' respective letters of appointment but is also contained in the 2009 Human Resource Manual, which was in force at the time the Petitioners were employed but which has now been replaced with the Human Resource Policies and procedures Manual, December 2025 which instruments were forwarded for approval without adequate staff participation and/or involvement.

4. To the extent that the Human Resource Policies and procedures Manual, December 2025 have expressly removed the Research Allowance from the list of allowances payable to the 1<sup>st</sup> Respondent's staff, notwithstanding the absence of an advisory from the Salaries and Remuneration Commission, the Petitioners are apprehensive that the 2<sup>nd</sup> Respondent's decision as communicated by the 3<sup>rd</sup> Respondent aims at ultimately refusing to pay them the allowance despite the fact that it is expressly provided for in their respective contracts of employment as part of their remunerative package and which they have enjoyed for more than eight (8) years.
  
5. Having received approval of the Human Resource Instruments (Human Resource Policies and Procedures Manual, December, 2025, Organization Structure, December 2025 and Career Guidelines December 2025) from the 2<sup>nd</sup> Interested Party, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have gone ahead and advertised for recruitment to fill various positions as advertised in My GOV Newspaper of 10<sup>th</sup> February, 2026. Despite the glaring concerns the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have proceeded with the processes of employees' placement, conversion and transition. Additionally, shortlisting of the job applicants with contested December, 2025 Human Resource Instruments approved by the 2<sup>nd</sup> Respondents has been done.
  
6. The Petitioners/Applicants are apprehensive that if the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents proceed to implement the contested Human Resource Instrument, approved in December 2025,

through conducting interviews scheduled to commence from Monday 23/03/2026 as a process for hiring and appointment, the current and future researchers will be greatly prejudiced, noting that the instruments were forwarded for approval without adequate staff participation and/or involvement.

7. Unless the Court rescinds the 2nd and 3rd Respondents' decision, the Petitioners will be unable to meet their present and future financial obligations and this will affect their overall performance in the discharge of their duties and responsibilities as researchers. Ultimately, the overall service delivery and performance of the functions of the 1st Respondent will be adversely affected in view the fact that the Petitioners duties and responsibilities are at the core of the 1st Respondent's mandate.<sup>9</sup> Further, the decision to suspend the Petitioners Research allowance was made without consultation and/or involvement of the Petitioners in contravention of the express provisions of section 10(5) of the Employment Act which expressly prohibit the unilateral variation of the terms of a contract of service to the detriment of an employee without consultation and consent. Thus, the 2nd Respondent's decision as communicated by the 3rd Respondent violates the principles of Article 47 of the Constitution on Fair Administrative Action and provisions of the Fair Administrative Action Act Cap. 7L Laws of Kenya on lawfulness, reasonability and procedural fairness for failure to involve the participation of the affected staff (the Petitioners), before making the decision and further in the following ways: 9.1. 9.2. The 2nd and 3rd Respondents' decision to pick out and forward only a single allowance (the Research Allowance) to the Salaries and Remuneration Commission, the 1st Interested Party herein, for advisory in isolation of the rest of the

allowance is procedurally unfair, unreasonable and illegal in the circumstances. The 2nd and 3rd Respondents' decision to suspend the Research Allowance contradicts the Salaries and Remuneration Commission's, the 1st Interested Party herein, Policy Guideline for the Public Service of October 2021, where the 1st Interested Party provided for a Transitional Clause on the Allowances that were payable to public service institutions and stated thus at Clause 3(a) and (b) thereof: (a)"...Public service institutions shall submit to the commission all allowances payable and await setting, review and advise by SRC; and b) Allowances that are currently obtaining shall continue to be paid until the commission issues an advisory to public service institutions on the allowances."

10. Unless this Honourable Court intervenes urgently, the Petitioners stand to suffer substantial financial prejudice and violation of their constitutional and statutory rights.

8. The application is supported by the Affidavits of Stephen Masango Muteti, Vincent Odhiambo Opondo, Dickson Gitonga Njiru, Phylis Wanjiku Muriuki and Isaiah Nyambariga Ndege.

9. The application was opposed by the respondents through affidavit of Mutuma Ruteere dated 25<sup>th</sup> March 2026. Pertinent in the response was that the impugned payment of the research allowance was pending the advice of the 1st Interested Party as per the SRC 2021 policy guidelines, and that the issue of research allowance was subjudice vide ELRC CAUSE NO. E0988 OF 2025 before Justice Onesmus Makau.

10. The applicant filed a further affidavit sworn by Stephen Masango Muteti on the 27th March 2026. Pertinent in the reply was a reference to cause E988 OF 2025 to effect that the instant applicants were not parties in the pending case and further that the case related to deployed staff and thus their case was different, being actual employees of the respondent. The deponent further urged the research allowance predates the operationalization of the SRC and was approved by SCAC.

### Decision

11. The application was canvassed orally. Both parties were represented.

12. Is this petition sub judice? The Respondents, through an affidavit by Dr. Mutuma Ruteere sworn on March 25, 2026, attached their submissions in Cause E988 of 2025 pending the court's judgment. The court's attention was drawn to the response paragraph 't', which stated: 'That the Claimants' claim of underpayment of Research Allowance is baseless as the said allowance did not have the approval nor rates set by the 2nd Interested Party who has the constitutional mandate to do so, and as such, the Claimants cannot claim an illegal allowance.' The applicants argued that their case was not sub judice since the claimants in E988 of 2025 were seconded employees and not actual employees of the 1st respondent, unlike the applicants. It is true the parties are from different employee categories. The 2nd Interested Party in this claim is SRC. The claim for the research allowance in E988 of 2025 is based on the 2009 HR manual of the respondent, which remains the foundation of this petition. The court in E988 of 2025 is expected to

determine whether the research allowance was valid and payable to the employees. I find that the issue of the research allowance in this petition hinges on the same 2009 manual as in cause E988 of 2025. Sub judice is a Latin term meaning ‘under a judge’ or ‘before the court or judge for determination’ (Black's Law Dictionary, 10th Ed, Garner). The subject matter of the research allowance under the 1st respondent is thus sub judice pursuant to Nairobi ELRC CAUSE E988 of 2025. There is always a risk of the court issuing contradictory decisions. Therefore, it is prudent and in the interest of justice to hold the determination of this petition in abeyance until the judgment in E988 of 2025 on the research allowance is issued.

Whether the petition met threshold for grant of conservatory orders.

13. The threshold for granting conservatory orders is as established by the Supreme Court of Kenya in *Gatirau Peter Munya vs. Dickson Mwenda Githinji & 2 other* (2014) eKLR — ‘Conservatory orders bear a more decided public-law connotation: for they are orders that facilitate the orderly functioning within public agencies, as well as uphold the adjudicatory authority of the Court in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to private-party issues such as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.<sup>8</sup> Conservatory orders ought to be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

14. The court finds that the research allowance has already been suspended, as shown in SMM-10, which includes the applicant's January to February 2026 payslips (further affidavit of Muteti). The applicant justifies the conservatory order by stating that the ongoing interviews are based on the 2025 human resources manual, which they claim was implemented without staff participation or consensus and without advice from the relevant entity, making it illegal and in bad faith. The applicants, who are participating in the ongoing interviews, are concerned that signing new contracts could be used to argue they have forfeited their entitlement to the research allowance.

15. Conservatory orders should be granted based on the inherent merits of a case, considering the public interest, constitutional values, and the proportionality, significance, and priority levels associated with the relevant causes (Munya case, supra). The respondents argued that the applicants are not the sole candidates in the ongoing interviews. Halting the recruitment would hinder the provision of public services by the first respondent. The said allowance was discontinued before the interviews began and is currently pending advisory by the SRC. The SRC also put the issue on hold pending the judgment in Cause E988 of 2025. Providing public service holds a higher priority than individual claims. The applicants are not prejudiced, because if the court finds that the 2025 manual was illegal and that the applicants were entitled to the research allowance, the default position would revert to the 2009 manual, and the allowance would be payable in arrears. According to the applicants, the interviews started on March 23, 2026, and it is clear that public funds have been spent during this process, which is not challenged as procedurally improper. The basis for challenging the process is that new contracts under the

recruitment will not include the research allowance, as it is not covered under the current HR manual. The issue of a legitimate expectation for continued payment of the research allowance does not arise since the allowance was discontinued. Now, this matter is a court dispute over the legality of the 2025 manual, and the outcome will determine the research allowance's fate. Therefore, issuing a in rem order to halt employee recruitment and public service delivery until the dispute about the manual is resolved is not proportionate. The court finds that the application did not satisfy the requirements for a conservatory order for the reasons stated. The application is dismissed, with costs in the cause.

16. The court further orders that the petition be held in abeyance pending the delivery of judgment in Cause No. E0988 OF 2025 Soi and 5 others v. the Respondent and others, which is scheduled for June 18, 2026. Mention is set for June 23, 2026, for further directions.

17. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH, 2026.

J.W. KELI,

JUDGE.

In the Presence of:

Applicants – Aballah h/b Dr. Komolo

Respondents- Oloibon

1<sup>st</sup> interested party -Muthomi

2<sup>nd</sup> interested party – Ngelechei