



REPUBLIC OF KENYA



**Ingasira v Social Health Authority (Employment and Labour Relations  
Petition E277 of 2025) [2026] KEELRC 900 (KLR) (9 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 900 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E277 OF 2025**

**HS WASILWA, J**

**APRIL 9, 2026**

**BETWEEN**

**ROBERT MBARANI INGASIRA ..... PETITIONER**

**AND**

**SOCIAL HEALTH AUTHORITY ..... RESPONDENT**

**JUDGMENT**

1. By a Petition dated 18<sup>th</sup> December 2025, the Petitioner prayed for the following orders: -
  1. A Declaration that the Petitioner's Fundamental Rights and Freedoms have been violated by the Respondent;
  2. A Declaration that the Respondent terminated the Petitioner's employment unfairly;
  3. A Declaration that the Respondent discriminated against the Petitioner;
  4. An order directed to the Respondents to reinstate the Petitioner to the position of Director, Funds and Finance Management, without loss of any benefits accruing to him;
  5. Aggravated Damages;
  6. General Damages for Constitutional breaches and violations;
  7. Costs of, and incidentals to, these proceedings be borne by the Respondent;
  8. Payment of all lawful dues comprising the benefits due to him as at the time of his termination; and
  9. Any other relief that this Honourable Court may deem just to grant.



## Petitioner's Case

2. The Petitioner avers that he was lawfully employed by the Respondent as Director, Funds and Finance Management on 10<sup>th</sup> April 2025 and served in that capacity until 27<sup>th</sup> November 2025 when his employment was unlawfully, unprocedurally and unfairly terminated.
3. He avers that during his tenure, he rendered exemplary service, diligently executed his duties, and consistently met or exceeded the performance targets set for his role, thereby contributing significantly to the Respondent's operations and growth.
4. It is the Petitioner's case that his appointment arose within the transition from the National Health Insurance Fund (NHIF) to the Social Health Authority (SHA) under the Social Health [Insurance Act](#), No. 16 of 2023, whose transitional provisions required that staff be considered for absorption, redeployment, or appointment in a lawful, transparent, and non-discriminatory manner.
5. The Petitioner avers that the statutory framework did not permit differential treatment between employees on fixed-term contracts and those on permanent and pensionable terms, and that any cessation or redeployment was to be undertaken through clear and lawful communication.
6. He avers that his contract dated 10<sup>th</sup> April 2025 was entered into exclusively between himself and SHA, made no reference to the Public Service Commission (PSC) or to any secondment, and therefore confirms that at all material times he was an employee of SHA. He contends that any assertion that his contract could be treated differently from other staff is unlawful, discriminatory and unsupported by statute.
7. The Petitioner further avers that the transitional provisions expressly contemplated that staff not absorbed would be redeployed within the public service, yet no reasons, information or explanation were given to him for his non-shortlisting and non-absorption.
8. The Petitioner avers that on 2<sup>nd</sup> September 2025, following his non-shortlisting for the re-advertised position of Director, Funds and Finance Management, he formally wrote to the Chairperson of the Board requesting to be furnished with the specific reasons for his exclusion. Although a response was issued on the same date, no reasons were provided, and the response merely indicated that he had not been shortlisted without specifying which requirements he had failed to meet. He maintains that his letter was a request for information and not an appeal, and despite this request, no reasons, minutes or Board resolutions were ever availed.
9. The Petitioner further avers that it has been alleged that a new Director, Funds and Finance Management was appointed on 30<sup>th</sup> September 2025, but this information was never communicated to him, nor was he notified of any handover or transition. He contends that he remained in active employment, his contract was never revoked, and he continued to receive his salary for September and October 2025.
10. He states that on 22<sup>nd</sup> October 2025, he accompanied the Chief Executive Officer, Dr. Mercy Mwangangi, to a sitting of the National Assembly Public Investment Committee, where he was introduced and participated in his substantive capacity as Director, Funds and Finance Management, demonstrating that he remained in office.
11. The Petitioner avers that the first formal communication adversely affecting his employment was a letter titled "Notification Regarding Completion of Recruitment and Exercise of Statutory Separation Option", Ref: HF/S/2702/(17), dated 27<sup>th</sup> November 2025, but received on 2<sup>nd</sup> December 2025 via his official work email.



12. He contends that the said letter purported that his contract had lapsed on 31<sup>st</sup> October 2025, which date was irregularly and unlawfully backdated, as no prior communication had been issued to him at the material time, and he had remained in active service. He further avers that his salary for November 2025 has not been paid.
13. The Petitioner contends that the Respondent's reliance on the PSC as his alleged employer is untenable, as the PSC was not involved at any stage in the purported separation process and issued no communication regarding his cessation. He maintains that the assertion that no employer-employee relationship existed beyond May 2025 is unsupported by the documentary record and contradicted by the Respondent's own conduct.
14. It is the Petitioner's case that the Respondent retained him in active service, assigned him duties, and treated him as a serving employee throughout, which conduct is inconsistent with the position now advanced and demonstrates procedural unfairness, arbitrariness and bad faith.
15. He further avers that the letter dated 27<sup>th</sup> November 2025, authored by Dr. Mercy Mwangangi, did not lawfully terminate his contract, yet purported to adversely affect his employment status, despite being issued by SHA and not the alleged employer, the PSC.
16. The Petitioner contends that he was never issued with a notice of intended termination, never given reasons for termination, and was never invited to any meeting or disciplinary process to respond to any allegations, contrary to the mandatory provisions of the *Employment Act*, 2007 and the Respondent's Human Resource Manual, which require notice, valid reasons, and due process prior to termination.
17. He avers that the Respondent failed to formally nullify, rescind, revoke or cancel his contract of employment prior to issuing the termination letter.
18. It is the Petitioner's case that the Respondent's actions violated his constitutional rights under Articles 41, 47 and 50 of *the Constitution*, as well as Section 4 of the *Fair Administrative Action Act*, by denying him fair labour practices, fair administrative action and the right to a fair hearing.
19. The Petitioner avers that the Respondent acted arbitrarily, in a high-handed and oppressive manner, in breach of the principles of natural justice and the rule of law.
20. He contends that he was subjected to discriminatory and punitive treatment, including non-payment of his November 2025 salary and the advertisement and filling of his position before his contract had been lawfully terminated, while other similarly placed employees were allowed to continue in service.
21. The Petitioner avers that by omitting his name from the list of shortlisted candidates without justification, the Respondent denied him fair administrative action and a fair hearing.
22. He states that he served the Respondent with legitimate expectation arising from his contract and the governing legal framework, and that the Respondent's actions have caused him economic loss, mental stress, anxiety, apprehension and instability, and have prejudiced his prospects in the job market.
23. The Petitioner maintains that unless the Court intervenes, the Respondent's actions will continue to occasion irreparable violation of his fundamental rights through unfair labour practices.
24. He avers that the Respondent's conduct contravened the principles of natural justice and the rule of law, and amounted to unfair labour practices.
25. The Petitioner avers that there have been no previous proceedings between the parties on the same subject matter before this Court.



## Respondent's Case

26. In opposition, the Respondent filed a replying affidavit dated 13<sup>th</sup> January 2026, sworn by Dr. Mercy Mwangangi, its Chief Executive Officer.
27. The Respondent avers that the Petition is filed in bad faith, is an afterthought, constitute an abuse of the Court process, and are premised on a fundamental misapprehension of the Petitioner's employment status.
28. It is the Respondent's case that upon the repeal of the National Health Insurance Fund Act (No. 9 of 1998) by Section 54 of the Social Health *Insurance Act*, 2023, the Petitioner did not automatically become an employee of the Respondent.
29. The Respondent avers that paragraph 6 of the First Schedule to the Act mandates the Authority to competitively recruit and appoint its staff, while staff of the defunct NHIF were only eligible to apply for advertised positions and would be given priority subject to suitability and qualifications. Staff of the defunct Fund not appointed by the Authority may be redeployed within the public service.
30. It is the Repondent's case that the Petitioner remained, for all intents and purposes, an employee of the wider public service under the auspices of the Public Service Commission (PSC), merely deployed to the Respondent during the transition period. At no point did an employer-employee relationship crystallize directly between the Petitioner and the Respondent under the new statutory dispensation.
31. The Respondent contends that the appointment dated 10<sup>th</sup> April 2025, which the Petitioner seeks to rely upon, was unequivocally nullified by this Court in ELRC Petition E078 of 2025: Said Omar Abdile -vs.- Social Health Authority (SHA) & 3 Others (hereinafter referred to as the Abdile Case) vide the judgment delivered on 29<sup>th</sup> May 2025.
32. The Respondent avers that following the said judgment, the Petitioner reverted to his substantive status as a public officer deployed to the Authority by the PSC, and he remained in that capacity until 21<sup>st</sup> November 2025.
33. The Respondent asserts that any grievances the Petitioner may have in respect of the period between 21<sup>st</sup> November 2024 and 21<sup>st</sup> November 2025 relate strictly to his engagement with the Public Service Commission and are not attributable to the Respondent.
34. The Respondent aversthat pursuant to the statutory requirement for competitive recruitment under Paragraph 6(2) of the First Schedule to the Act, and as clarified in the Abdile Case, the Respondent advertised positions on 29<sup>th</sup> July 2025. The Petitioner participated in this process not as an internal employee of the Respondent, but as an external applicant eligible under the transitional provisions.
35. The Respondent avers that the Petitioner was not shortlisted for the position applied for, and that the reasons for his non-shortlisting were duly communicated to him, as evidenced in the Respondent's letter dated 2<sup>nd</sup> September 2025.
36. The Respondent further contends that the Petitioner has not challenged the integrity of the recruitment process nor the reasons for his failure to be shortlisted.
37. It is the Respondent's case that following the conclusion of the recruitment process, a substantive appointment was made to the position of Director, Funds and Finance Management, and the appointed officer has since reported and taken up office.



38. The Respondent avers that the Petitioner was aware of his status as a deployed officer assisting in the transition, and in that capacity, he provided administrative support to the newly recruited Director, including accompanying the said Director to the National Assembly Public Investment Committee sitting on 22<sup>nd</sup> October 2025.
39. The Respondent maintains that strictly speaking, no employer–employee relationship existed between the Petitioner and the Respondent, save for the period between 10<sup>th</sup> April 2025 and 29<sup>th</sup> May 2025, which relationship was subsequently annulled by this Court.
40. The Respondent avers that it formally clarified the nature of this relationship to the Petitioner through its response to the Petitioner’s demand letter dated 22<sup>nd</sup> December 2025.
41. The Respondent contends that the prayers sought in the Petition are untenable as against it, as the Petitioner is a deployed public officer whose recourse, if any, lies with the Public Service Commission and not the Respondent.

### **Petitioner’s Submissions**

42. The Petitioner submitted that he was lawfully recruited by the National Social Security Fund (NHIF) on 11<sup>th</sup> October, 2023 following a competitive process and executed a five (5) year fixed-term contract as Director, Financial Services. Subsequently, on 19<sup>th</sup> October 2023, the Social Health *Insurance Act* No. 16 of 2023 (hereinafter the SHA ACT) was assented to and subsequently came into force on 22<sup>nd</sup> November, 2023 thereby establishing the Social Health Authority (the Respondent).
43. The Petitioner submitted that he appointed as the Acting Chief Executive Officer of the Respondent on 12<sup>th</sup> November 2024, which position he held up to 2<sup>nd</sup> June 2025. Subsequently, he was issued a formal contract of employment on 10<sup>th</sup> April 2025 to the position of Director, Funds and Finance Management for a fixed term of Five (5) years. The said Contract was entered into exclusively between the Respondent and the Petitioner which action confirmed that he was at all material times an employee of the Respondent.
44. It was the Petitioner’s submission that on 2<sup>nd</sup> September, 2025, after failing to be shortlisted for a re-advertised position, he formally sought reasons from the Respondent’s Board Chairperson for the non-shortlisting. However, no reasons were furnished, and instead, he was issued with a termination letter.
45. It was further submitted that the Respondent’s assertion that another Director, Funds and Finance Management had been appointed on 30<sup>th</sup> September, 2025 was never communicated to the Petitioner, nor was any handover process initiated as required under internal HR transition policies. The Petitioner argued that there’s no lawful basis upon which two persons would have held the same office during the month of October, 2025.
46. The Petitioner submitted that the Petitioner’s contract was never revoked neither did he receive any communication that indicated that his employment had ceased since he continued to receive his salary for September, and October, 2025.
47. The Petitioner submitted that the Respondent’s reliance on the PSC as being the Petitioner’s alleged employer not true but misleading as the PSC was never involved at any stage in the purported separation process between the Petitioner and the Respondent neither did it issue any communication whatsoever regarding the cessation of the employment Contract between the parties herein.
48. On the issue of the Public Service Commission (PSC), the Petitioner submitted that the Respondent’s reliance on the PSC as his employer was misleading and unsupported, as the PSC played no role in



his appointment, management, or purported separation. He argued that this position contravenes both the contractual framework and the Respondent's HR Manual provisions on appointment and separation of staff.

49. It was the Petitioner's submission that the assertion made by the Respondent that no employer-employee relationship existed between them and the Petitioner for the period 10<sup>th</sup> April, 2025 and 29<sup>th</sup> May, 2025 is untenable, unsupported by any evidence and the same is inconsistent with the Respondent's own conduct.
50. It is the Petitioner's submission that the Respondent retained the Petitioner in active service and equally assigned him duties and treated him as a serving employee throughout the material period of his employment therefore the Respondent's conduct/actions demonstrate procedural arbitrariness and bad faith.
51. The Petitioner further submitted that as a result of the Respondent's unlawful actions, he has suffered mental anguish, stress, anxiety, and instability, warranting the Court's intervention and protection.
52. In support of the petition, the Petitioner relied on *Mugambi v Kenya Revenue Authority* [2025] KEELRC 3144 (KLR), where the Court held that the prayer sought by the Petitioner not to fill up the vacant position he held in the Respondent Authority was fair for purposes of preserving the substratum of the Petition and in order to avoid miscarriage of justice.

### **Respondent's Submissions**

53. The Respondent submitted on five issues: whether a valid employer-employee relationship existed between the Petitioner and SHA after 29<sup>th</sup> May 2025; whether the Petitioner's contract of 10<sup>th</sup> April 2025 survived the *Abdile* case judgment; whether Respondent violated Articles 41 and 47 of *the Constitution*; whether the Petition constitutes an abuse of court process; and whether the orders are appropriate in the circumstances on the present case.
54. On the existence of an employment relationship, the Respondent submitted that such a relationship must be founded on a valid and lawful contract. The Petitioner's reliance on the contract dated 10<sup>th</sup> April 2025 is misplaced, as the said contract was nullified by the Court in *Abdile v Social Health Authority (SHA) & 3 others* [2025] KEELRC 1552 (KLR). The Court declared the recruitment process and resulting appointments unlawful, thus, the legal foundation of the Petitioner's contract was extinguished.
55. The Respondent submitted that it is a well-settled principle of law that a contract declared unlawful cannot confer enforceable rights. The maxim *ex nihilo nihil fit* "from nothing, nothing comes" is directly applicable. Reliance was placed in *MacFoy v United Africa Company Ltd* [1961] 3 All E.R. 1169 (P.C.) Lord Denning affirmed that an act which is void is not merely defective but incurably bad, and any proceeding founded on it is likewise invalid. Consequently, the Petitioner could not derive any rights from a contract that was judicially invalidated, as once the April 2025 appointments were nullified, they ceased to exist in the eyes of the law.
56. It was submitted that the Petitioner reverted to his substantive employment under the Public Service Commission (PSC), which had seconded him to the Respondent during the transitional period. The mere fact that he continued to receive a salary or remained physically present at the Respondent's offices does not, in law, create an employment relationship where none exists. Such circumstances are entirely consistent with secondment arrangements and transitional administrative processes.
57. It is the Respondent's submission that following the nullification of the April 2025 contract, any lawful authority governing the Petitioner's engagement resided solely with the Public Service Commission,



- not the Respondent. Accordingly, no enforceable employer-employee relationship existed between the Petitioner and the Respondent beyond the date of judicial nullification. It cited *Kenya Ports Authority v Festus Kipkorir Kiprotich* [2014] eKLR to submit that employment status must derive from lawful authority.
58. On the effect of the Abdile judgment, the Respondent submitted that the decision declared the recruitment process and all resultant appointments to be invalid and unlawful and of which the Petitioner was a part. A declaration of invalidity made by a competent court operates universally as to the subject-matter declared null, not merely between the original litigants. Such a decision is effectively a judgment in rem - a judgment which determines the status of a matter and binds all persons, not only the immediate parties to the litigation.
59. It is the Respondent's submission that the effect of the court's declaration in Abdile Case was that the recruitment process was quashed as null and void ab initio, and any contracts arising from that process were rendered incapable of surviving judicial nullification. Under well-established principles of contract law, a party cannot enforce or rely upon a contract that has been declared illegal or void by a court of competent jurisdiction. This is consistent with the general maxim that *ex turpi causa non oritur actio* ("no action arises from a base cause"), which bars enforcement of contracts tainted by illegality.
60. The Respondent placed reliance in *National Bank of Kenya Limited v Anaj Warehousing Limited* [2015] eKLR wherein the Supreme Court held that legal documents prepared by an unqualified advocate are not automatically void, emphasizing that courts should not aid in perpetuating illegalities and that the object of justice is to avoid unjust outcomes.
61. The Respondent thus submitted that the April 2025 contract, premised on recruitment subsequently judicially declared null, could not survive the declaration of invalidity. It follows that no doctrine of ratification can revive a void contract; equity cannot be invoked to validate what statute and a competent court have invalidated. As the equitable maxim states, "Equity follows the law"- equity cannot be used to resurrect a contract that is void at law. This maxim reinforces the fundamental rule that equitable doctrines cannot override statutory nullification or judicial determinations of illegality.
62. It is the Respondent's submission that the Petitioner's lack of direct party status to Abdile Case does not excuse reliance on appointments or contracts that were universally declared invalid. The judgment operates as a declaration of status with respect to the recruitment process, binding all persons as to its subject-matter. Contracts arising out of that process are therefore incapable of enforcement, and equitable doctrines cannot be employed to circumvent statutory or judicial nullification.
63. On the alleged violation of Article 41 of *the Constitution*, the Respondent submitted that the Petitioner's contract with the respondent authority was nullified by the Employment and Labour Relations Court in *Abdile v Social Health Authority (SHA) & 3 others* [2025] KEELRC 1552 (KLR), wherein the Court declared the entire recruitment process invalid and all resultant appointments void. It is not legally open to any party thereafter to treat a contract arising from an invalid process as though it had been properly formed or capable of termination in law.
64. It is the Respondent's submission that once judicial nullification has occurred, there is no contract standing to be terminated; the contract is void, not merely rescinded. Therefore, there is no act of termination by the employer. Sections 41, 43 and 45 of the *Employment Act*, which set out the rights and procedures relating to termination of employment, apply only where there is a valid employment relationship and an employer-initiated termination. In the absence of a contract, those provisions have no application because they presuppose an existing employment relationship and an employer's



decision to terminate it. Put differently, they cannot be invoked where the contract has already been judicially extinguished

65. The Respondent argued that, as held in *Walter Ogal Anuro V Teachers Service Commission*[2013]eKLR, for termination to pass the statutory fairness test, the employer must prove both a valid substantive reason for termination and that fair procedure was followed before the employment was ended. In other words, termination is a distinct act by the employer, separate from other changes in employment status.
66. It is the Respondent's submission that there was no act of termination by the Social Health Authority; it was a judicial nullification of the employment contract and the natural conclusion of a secondment or assignment as a consequence of that nullification. The Petitioner did not face dismissal or termination at the hands of the Respondent; rather, the legal foundation for the contract itself disappeared. In such circumstances, the protective regime for unfair termination claims - including notice of termination, reasons for dismissal, and procedural safeguards in Sections 41, 43 and 45 of the *Employment Act* does not arise because there is no contract left to terminate.
67. On violation of Article 47, the Respondent submitted that shortlisting is inherently a merit-based administrative screening exercise, designed to filter applicants for interviews or further evaluation. The purpose of shortlisting is to ensure that only those candidates who meet the minimum qualifications and requirements proceed to the next stage. It is not a final adjudication of employment rights, nor does it itself create an enforceable contractual relationship.
68. The Respondent submitted that Article 47 of *the Constitution* guarantees fair administrative action, requiring that individuals affected by administrative decisions are treated fairly. The law distinguishes between procedural fairness and the provision of detailed reasoning; the former ensures that the decision-making process is transparent and non-arbitrary, while the latter may not always be mandated in routine administrative exercises such as shortlisting.
69. The Respondent submitted that in *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR the Court observed that the level of explanation required in administrative processes varies depending on the nature and impact of the decision. Shortlisting for competitive recruitment, being preliminary in nature, does not necessitate exhaustive disclosure to each applicant. In the present case, the Petitioner was informed of the outcome and was provided with the general reasons for his non-selection. He did not pursue any administrative review or internal remedy to contest the process, further reinforcing that his claim lacks procedural grounding.
70. It is the Respondent's submission that failure to be shortlisted does not, in itself, constitute a constitutional violation. Shortlisting merely represents a preliminary administrative assessment, and so long as the process is conducted fairly and transparently, no legal obligation arises to provide detailed individualized feedback. The maxim, *Vigilantibus non dormientibus aequitas subvenit*, equity aids the vigilant, not the indolent. Applicants who fail to take timely steps to seek clarification or review cannot later invoke equity to remedy an ordinary administrative outcome. Procedural fairness has been observed in this case; the Petitioner had opportunities to seek redress but did not exercise them.
71. On the alleged inconsistencies in cessation dates, the Respondent submitted that administrative timelines relating to the conclusion of secondments or transitional arrangements do not, in themselves, create a valid employment contract. The law distinguishes between procedural administrative formalities and substantive contractual obligations; mere presence during a transitional period or continued engagement for administrative convenience does not constitute an enforceable employment relationship.



72. The Respondent further submitted that the Petitioner's continued presence after the official conclusion of his secondment was a matter of transitional courtesy, intended to facilitate orderly handover and operational continuity, rather than an affirmation of any contractual right. Courts have consistently held that the appearance of work or administrative presence cannot be construed as tacit ratification of an employment contract where no lawful basis exists. As such, no unlawful termination arises from the administrative timelines, and no employment relationship was inadvertently created during the transition period.
73. It is the Respondent's submission that the Petitioner cannot invoke mere administrative timelines to claim rights where judicial determinations, such as in *Abdile v Social Health Authority (SHA) & 3 others* [2025] KEELRC 1552 (KLR), have declared the appointments and underlying contracts void.
74. On abuse of process, the Respondent submitted that the instant petition seeks to relitigate matters that were conclusively determined in *Abdile v Social Health Authority (SHA) & 3 others* (supra). Such attempts amount to an abuse of court process, which has been judicially defined as the misuse of judicial procedure for an improper purpose. It cited *Muchanga Investments Ltd V Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR, the Court held that abuse of process arises where a party seeks to use litigation as a vehicle to achieve an ulterior motive, rather than to resolve a genuine legal dispute.
75. The Respondent submitted that the Petition constitutes an abuse of the court process in that it seeks to revive a contract already nullified by the Court in the *Abdile* case, improperly attributes the actions of the Public Service Commission to the Respondent so as to fabricate a claim, and attempts to circumvent the outcome of a lawful, merit-based recruitment process.
76. It was further submitted that, taken cumulatively, these actions render the Petition vexatious, misconceived, and an improper invocation of the Court's jurisdiction, as it seeks to relitigate matters already conclusively determined, contrary to the principles of finality of litigation and judicial economy.
77. On the appropriateness of the reliefs sought, the Respondent submitted that The Respondent submitted that in determining whether the reliefs sought are appropriate, the Court should be guided by *Republic v Ministry of Health, Cabinet Secretary Ministry of Health & Attorney General Ex-parte Kennedy Amdany Langat & 14 others & Amit Kwatra & 12 others* [2018] KEHC 5221 (KLR), where at first instance, the High Court, in addressing the legality of the impugned administrative action, affirmed that once a constitutional violation is established, the Court is obligated under Article 23 to grant appropriate relief; however, the Court emphasized that remedies must be proportionate, context-sensitive, and strictly confined to curing the specific illegality demonstrated, and should not unnecessarily disrupt institutional mandates. On appeal, the Court of Appeal emphasized judicial restraint, noting that courts should not issue orders that interfere with statutory bodies or disrupt essential public functions, and that relief must be strictly tailored to the proven violation.
78. Applying these principles, the Respondent argued that the sweeping declaratory and restorative orders sought are inappropriate, as they would effectively revive a contract already nullified and interfere with lawful administrative processes. The impugned April 2025 contract was nullified by the Court in *Abdile*, thereby extinguishing its legal foundation.
79. Accordingly, it was submitted that judicial intervention should not revive a void instrument nor interfere with lawful administrative restructuring undertaken pursuant to a court judgment. Where the legal substratum of the employment relationship ceased to exist and competitive recruitment was subsequently undertaken in compliance with judicial directions, the proportionate and legally sound course is dismissal rather than coercive or restorative orders. The reliefs sought are therefore



disproportionate, legally untenable, and inconsistent with the appellate jurisprudence on tailored constitutional remedies.

80. I have examined all the averments of the parties herein. The issues for this court's determination are as follows:

1. What were the terms of engagement between the petitioner and the respondents and whether the terms were breached.
2. Whether the petitioner's constitutional rights were breached.
3. What remedies if at all can be granted in the circumstances.

81. **Issue No 1**

On the 1<sup>st</sup> issue it is discerned from the evidence on record that the petitioner was initially recruited by the precursor to the respondent NHIF and retained on a five year fixed contract as Director, Financial Services on 11/10/23. On 19<sup>th</sup> October 2023 the Social Health Act no 16 of 2023 (hereafter referred to as SHA Act) was ascended to and subsequently came into force on 22<sup>nd</sup> November 2023 thus establishing the SHA (the respondent's herein).

82. On 12<sup>th</sup> November 2024 the petitioner was appointed as the respondents acting CEO and he held this position up to 2/6/2025. He avers that he was issued a formal contract of service on 10/4/2025 for position of Director Funds and Finance management for a fixed term of 5 years as per Annex RM16. The said annexure was not however presented to court.

83. He contends that staff of the defunct NHIF were temporarily deployed to SHA on their existing terms with effect from 22/11/2024 for a period of 6 months or until the lapse of their respective contracts whichever occurred earlier.

84. He continued to serve as Director, Funds and Finance Management until 3rd June 2025. It is also apparent that he was appointed as the respondent's Acting CEO vide a letter of 12th November 2024 and as entitled to payment of acting allowance and this implies that he retained his substantive appointment of Director, Beneficiary and Provident Management of NHIF pending the transitional arrangements.

85. Vide a letter of 21/11/2024, the petitioner was informed of the provision of SHI Act, which indicated that the appointment under NHIF were to come to an end by operation of the law by close of business on 21/11/2024.

Section 17 of SHI Act 2023 provides as follows:

The Board may appoint such staff as may be necessary for the proper discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine upon the advice of the Salaries and Remuneration Commission.

86. The Social Health Insurance Act No 16 of 2023 is an act of Parliament which was asserted to on 19<sup>th</sup> October 2023 and commenced on 22/11/23. This Act repealed Act No 9 of 1998 (the NHIF Act). The 1<sup>st</sup> schedule of the Act established under section (4) of the Act set out transitional provisions from NHIF to SHI. Section (6)(5) of the 1st schedule provided as follows:

“ a staff of the fund not appointed by the authority under sub paragraph (2) may exercise his or her option to either:

- (a) retire from public service or



(b) be redeployed within the public service”.

87 The PSC vide the letter of 21/11/24 informed the petitioner that his appointment with NHIF was coming to an automatic end by operation of law by close of business on 21/11/24. The PSC also indicated that he was going to be temporarily deployed to SHA on his current terms with effect from 22/11/24 for a period of 6 months until his contract lapses and he was also eligible to apply for and be considered for appointment by SHA in the recruitment exercise undertaken by SHA.

88. He was further informed that if he was not considered for appointment by SHA, his temporary deployment at SHA would automatically terminate and he would be paid gratuity with effect from the time of appointment by NHIF to the termination of the temporary deployment at SHA. The petitioner attempt to be recruited by SHA failed. He appealed against the non consideration vide his letter of 25/4/24 but he failed to meet the recruitment process within SHA.

89. Vide a letter of 8/9/25 the petitioner wrote to the chairman of the PSC indicating that he had not been employed by SHA and hence in view of the above therefore he wrote to exercise my option to be redeployed within the Public Service in accordance with section 6(5) (1) of the first schedule of the Social Health Act 2023”

He also pointed out the decision of the ELRC In ELRC Petition No 042 of 2025 Patrick Kiogora Mwirigi and 2 Others vs Social Health Authority and 2 Others where under para 15 of the judgement, the court noted that:

“the new employer in such circumstances is obligated to recognize the previous service because the absorption in such cases is essentially a transfer of service from the previous to the new employees”

90. The petitioner essentially submitted his request for redeployment to the Public Service with his current salary for the remaining period of his contract or any other period that is higher.

91. Vide a letter of 21/10/25 the chairman of the PSC wrote back declining his request for deployment in the wider public service no apparent reasons were given as to why the PSC was not going to consider the request and especially in view of the provisions of the 1st schedule of the SHA act section 6(5) (supra).

92. In view of the chorology of events between the petitioner and the respondent, it is apparent that there was an option for the petitioner to be redeployed in the wider public service and which the petitioner requested from the PSC and the request to the PSC was declined or ignored and which led the respondent terminating the contract between the petitioner and themselves unfairly.

## Issue No 2

93. I have set out the existing relationship between the petitioner and the respondents and how the same was terminated. It is apparent that the petitioner was terminated by the respondent on what the respondent refer to as operation of the law. They cited section 17 of the SHI Act as read with paragraph (6) 1 of the first schedule of SHI act.

94. Section 17 only talk of the mandate of the board to appoint staff.

Paragraph 6(1) of the 1st schedule on the other hand talk of the winding up of NHIF within one year from the appointed day. The letter notifying the petitioner of his termination dated 27/11/25 also referred to an advisory from the PSC. There is no indication that the respondent referred to



the petitioner letter requesting for deployment in the wider Public Service as requested under the 1<sup>st</sup> schedule section 6(5) (b).

95. The respondent despite relying on an advisory from the PSC had an obligation to ensure adherence to the law and in which they failed and terminated the petitioner without consideration of his request to deployment in the wider Public Service. The petitioner's right under article 41 of *the Constitution* was indeed flouted. It is not clear why the advisory from the PSC excluded Directors in deployment while the 1<sup>st</sup> schedule section 6(5) (b) did not mention this fact. The action of excluding directors from deployment was therefore discriminatory and in breach of article 27 of *the Constitution* which states as follows:

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

It is therefore apparent that the right of the petitioner under *the constitution* of Kenya 2010 were infringed upon.

### **Issue No 3**

97. Having found as above, I find for the petitioner and enter judgment for him in the following terms:
1. A declaration that the petitioner's fundamental rights and freedoms have been violated by the respondent.
  2. A declaration that the respondent terminated the petitioner's employment unfairly.
  3. An order that the respondent do facilitate redeployment of the petitioner to the wider Public Service with effect from the date of termination without loss of benefits until end of his contract or as per determined by the PSC whichever is greater.
  4. The respondents to pay the petitioner kshs 3 million as damages for breach of his constitutional right.
  5. The respondents to pay costs of this suit plus interest at court rates.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL, 2026.**

**HELLEN WASILWA**

**JUDGE**

