

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MACHAKOS
ELRC JUDICIAL REVIEW APPLICATION NO. E001 OF 2026
IN THE MATTER OF ARTICLES 47, 232 & 234 OF THE CONSTITUTION

AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, CHAPTER 7L OF
THE LAWS OF KENYA

AND
IN THE MATTER OF THE EMPLOYMENT ACT, CHAPTER 226 OF THE LAWS OF
KENYA

AND
IN THE MATTER OF THE MATTER OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT

AND
IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT

AND
IN THE MATTER OF AN APPLICATION FOR AN ORDER TO SET ASIDE THE DECISION AS
COMMUNICATED IN THE LETTER DATED 22ND DECEMBER 2025
AND CIRCULAR DATED 23RD DECEMBER 2025

AND
IN THE MATTER OF THE INVESTIGATION OF THE PERSONNEL PRACTICES OF
THE 2ND RESPONDENT

AND
IN THE MATTER OF THE DEVELOPMENT AND APPROVAL OF THE HUMAN
RESOURCE INSTRUMENTS OF THE 2ND RESPONDENT

BETWEEN

MARTIN LUTHER BWANGA.....APPLICANT

-VERSUS-

EXECUTIVE DIRECTOR, ANTI-COUNTERFEIT AUTHORITY.....1ST RESPONDENT
ANTI-COUNTERFEIT AUTHORITY2ND RESPONDENT

CORAM

Before Lady Justice Jemimah Keli

C/A Otieno

JUDGMENT

1. The Applicant instituted this suit against the Respondents vide an Originating dated 2nd January 2026 seeking the following orders:
 - a) Spent.
 - b) That a temporary order of injunction maintaining the status quo be granted restraining the 1st Respondent from closing the 2nd Respondent's eastern regional office at Athi River, transferring any of its staff or diminishing any of its resources pending the bearing and determination of this application.
 - c) An order setting aside the decision of the 1st Respondent contained in the letter to the applicant dated 22nd December 2025 allegedly reassigning the Applicant to a non-existent, ambiguous and amorphous office or position in the employment of the 2nd Respondent.
 - d) An order setting aside the decision of the 1st Respondent contained in the circular to staff of the 2nd Respondent dated 23rd December 2025.
 - e) An order declaring that neither the 1st Respondent nor the 2nd Respondent has the power to create or abolish an office in the public service and that such power is the sole constitutional and statutory prerogative of the Public Service Commission.

- f) Costs of this application be paid by the 1st Respondent.
2. The Originating Motion was supported by the grounds set out therein, the Applicant's Supporting Affidavit dated 2nd January 2026, and the annexures thereto.
3. In response to the application, the Respondents filed a replying affidavit sworn by Hon. Nelson Ributhi Gaichuhie on 30th January 2026.

The Applicant's case in summary

4. The Applicant's case is that the Applicant is an employee of the 2nd respondent holding the position of principal anti-counterfeit inspector.
5. The Applicant states that the 2nd respondent is a state corporation and part of the public service under the control and direction of the Public Service Commission, hence it is the Public Service Commission that has the constitutional and statutory to develop and approve human resource instruments that include the career progression guidelines for staff, organization structure and human resource policy and procedures manual of the 2nd respondent as part of the public service, as well as assign primary responsibilities or functions or roles in the public service per the approved and applicable human resource instruments.
6. The material facts as presented by the Applicant are that on 7th August 2023, the 2nd respondent's decision to create a regional office for the eastern part of the country covering the

counties of Machakos, Makueni, Kitui and Kajiado was communicated. On the same day, the applicant was transferred from the head office of the 2nd respondent to the eastern regional office based at Athi River as the regional head.

7. Approximately two years later, by a letter dated 22nd December 2025, the 1st respondent purported to transfer the applicant back to the head office but with undetermined and unknown responsibilities, functions and roles that do not appear in the career progression guidelines for staff of the 2nd respondent or in the organization structure or job titles. According to the Applicant, the 1st respondent's letter of 22nd December 2025 essentially creates an unknown office in the public service under the guise of “reassignment”, an unknown term in the public service.
8. The Applicant avers that the 1st Respondent’s letter of 22nd December 2025 was accompanied the following day, on 23rd December 2025, by a purported circular by the 1st respondent dismantling and closing the 2nd respondent's eastern regional office based in Athi River. In the said letter of 23rd December 2025, it was indicated that the decision to dismantle and close the 2nd respondent's eastern regional office was made by management and not the board of directors of the 2nd respondent.
9. The Applicant challenges the actions of the 1st Respondent of re-assigning him on the basis that he has no power or authority to create an office in the public service or to conjure up functions, responsibilities or roles in the public service that are outside the approved human resource instruments as developed and approved by the Public Service Commission. He also impugns the

circular of 23rd December 2025 for using high sounding but dishonest and self-created justifications to dismantle and close the 2nd respondent's eastern regional office.

10. The Applicant is emphatic that the 1st respondent has no power to create regional offices or otherwise as this is a function of the board of directors of the 2nd respondent based on budgetary allocation and considerations. The board of directors of the 2nd respondent has not met and discussed and resolved to dismantle and close its eastern regional office. The management of the 2nd respondent has no power or authority to close a whole regional office without the sanction of the board of directors of the 2nd respondent.

11. It is the Applicant's case that the dismantling and closure of the 2nd respondent's eastern regional office was a result of an ultra vires, unilateral decision of the 1st respondent that is contrary to the values and principles of public service that require consultation. He states that the impugned letter and circular of the 1st respondent contravene article 47 of the Constitution as read together with sections 7 & 9 of the Fair Administrative Action Act because:
 - i. The 1st respondent is not authorized by section 10 of the Anti-Counterfeit Act to create a public office, an amorphous one at that;
 - ii. The 1st respondent is not authorized by any provision of the Constitution or the Public Service Commission Act to create a public office;
 - iii. The 1st respondent is not authorized by the approved human resource instruments of the 2nd respondent to create a public office;
 - iv. The 1st respondent is not authorized under section 10 of the Anti-Counterfeit Act to dismantle or close a public office without the express resolution of the board of directors of the 2nd respondent;

- v. The 1st respondent by purporting to confer on the applicant a non-existent office in the public service has acted in excess of jurisdiction or power conferred on him by section 10 of the Anti-Counterfeit Act;
- vi. The 1st respondent by purporting to dismantle and close the 2nd respondent's eastern regional office without the prior express resolution of the board of directors of the 2nd respondent and consultation has acted in excess of jurisdiction and power vested in him under section 10 of the Anti-Counterfeit Act;
- vii. The 1st respondent in making the decisions as contained in the impugned letter of 22nd December 2025 and the circular of 23rd December 2025 was biased and engaged in partisan retaliatory action;
- viii. The 1st respondent's impugned letter and circular were materially influenced by an error of law;
- ix. The 1st respondent's administrative action as contained in the impugned letter and circular was taken with an ulterior motive or purpose calculated to prejudice the applicant's legal rights;
- x. The 1st respondent's impugned decision and action were made in absolute bad faith;
- xi. The 1st respondent's impugned decision and action are irrational;
- xii. The 1st respondent's impugned decision and actions are unreasonable;
- xiii. The 1st respondent's impugned decision is disproportionate to the public interests affected;
- xiv. The 1st respondent's impugned decision and action violates the legitimate expectation of the applicant;
- xv. The 1st respondent's impugned decision and action are unfair; and
- xvi. The 1st respondent's impugned decision and action were made in abuse of power.

xvii. The decision of the 1st respondent as contained in the impugned letter and circular usurped the constitutional power, function and authority of the Public Service Commission under article 234 of the Constitution as read together with sections 26, 27 & 45 of the Public Service Commission Act as the 1st respondent purported to create an unknown, amorphous office in the public service for the applicant; the 1st respondent purported to develop a human resource policy for the applicant outside the approved human resource instrument for the 2nd respondent; and the 1st respondent purported to confer functions on the applicant that are outside the human resource instruments developed with the authority of the Public Service Commission.

12. It is stated that the 1st respondent's impugned letter and circular further violated the values and principles of public service as comprised in article 232 of the Constitution as read together with Sections 8 & 9 of the Public Service (Values and Principles) Act in that: the 1st respondent failed to consult the applicant and other affected officers in the impugned public policy decisions of reassignment, and dismantling and closure of the 2nd respondent's eastern regional office; the 1st respondent failed to be transparent and accountable by providing self-serving justification for his decisions and conduct; and the 1st respondent failed to provide accurate information to the internal and external stakeholders of the 2nd respondent.

13. In addition to the foregoing, it is stated that the 1st respondent's impugned decision and action as contained in the impugned letter and circular also violates the provisions of section 10(5) of the Employment Act in that: the 1st respondent failed to consult the applicant before varying his job description, place of work and job title.

14. Further to challenging the decision of the 1st Respondent contained in the letter and circular of 22nd and 23rd December 2025, the Applicant also disputes the existing human resource instruments of the 2nd respondent for being unconstitutional, self-contradictory and expressly violating specific provisions of the constitutional and statutory powers of the Public Service Commission, as they are developed by the State Corporations Advisory Committee, a body which the High Court has held has no authority to develop and approve human resource instruments in the public service. He urges the court to make orders compelling the Public Service Commission to undertake its constitutional and statutory function with regard to the human resource instruments of the 2nd respondent.

Respondents' case in brief

15. The Respondents clarified that under section 10(3) of the Anti-Counterfeit Act, the Executive Director, 1st Respondent herein subject to the directions of the Board, is responsible for the day-to-day management of the affairs of the 2nd Respondent, the supervision of inspectors and the implementation of the Act, and that the 2nd Respondent's Enforcement Directorate operates within this delegated management framework.

16. While admitting that the 1st Respondent communicated to all staff, through Circular No. ED/16 dated 23rd December 2025, a strategic operational realignment and optimised staffing plan for the year 2026, which included redeployments and appointments of staff in order to address acute capacity gaps and strengthen institutional effectiveness, the Respondents insist that the redeployments were lawful. The Respondents further admit that the Applicant, together with thirteen (13) other officers across various stations and grades, was affected by the

redeployments. The changes were communicated to each affected officer individually, including the Applicant.

17. It is the Respondents' case that the transfers and redeployments contained in Circular ED/16 were lawful, fell squarely within the statutory mandate of the Respondents, and were grounded in the Authority's Human Resource Policy and Procedures Manual, the Anti-Counterfeit Act and the applicable provisions of the Public Service Commission Act, namely:

- i. Section 10(3)(c) – (e) of the Anti-Counterfeit Act which provides that the Executive Director shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Authority, the supervision of inspectors and the implementation of the Act, which necessarily includes rational deployment of staff to meet enforcement needs.
- ii. Section 27 and Part VIII of the Public Service Commission Act which recognises deployment, transfer and related human resource actions as management tools, and requires that any organisational restructuring or abolition of offices be preceded by due process including deployment, transfer, removal or retirement of affected public officers, thereby affirming the primacy of redeployment as a lawful first resort.
- iii. the Public Service Commission's general principles on human resource management, which obligate the 2nd Respondent Authority to utilise available staff efficiently, align staffing with approved organisational structures and strategic plans, and permits it to deploy or transfer officers of the same grade from one duty station to another to meet operational requirements without such movement constituting a demotion, disciplinary sanction or constructive dismissal.

iv. the 2nd Respondent's Human Resource Policy and Procedures Manual (paragraphs 2.35.1 and 2.36.3-2.36.5) which expressly provides for management-initiated transfers, posting and redeployment, stipulating requirements on written communication, notice periods and performance review timelines. These internal policies operationalise the general public service framework at the Authority level.

18. The Respondents defend their decision to redeploy the Applicant by stating that as a junior manager within the Enforcement Directorate, the Applicant is subject to the Authority's legitimate operational decisions on posting and deployment and holds no contractual or statutory entitlement to serve in any particular region or station, provided his grade, remuneration and core professional functions remain intact in line with public service norms.

19. On the issue of professional fairness, it is stated that in implementing Circular ED/161 the Respondents complied with the 2nd Respondent's Human Resource Policy and Procedures Manual and Article 47 of the Constitution, as well as the Fair Administrative Action Act, by: issuing the Applicant with a written transfer/redeployment letter dated 22nd December 2025 specifying the decision of the Respondent, the Applicant's new duty station and the reporting date of the Applicant; setting out the reasons for the redeployment in the letter as strategic operational realignment and optimised staffing plans for 2026, which are rational and objectively connected to the Authority's statutory mandate; granting the Applicant twenty-one (21) days' notice between the date of the transfer letter (22nd December 2025) and the reporting date (13th January 2026), in line with the notice provisions in the Human Resource Policy and Procedures Manual for management-initiated transfers; describing the Applicant's new operational role and scope of work in the letter, namely capacity-building and AIMS

stabilisation of digital/online enforcement operations the 2nd Respondent's Headquarters, a role commensurate with his grade and professional expertise; preserving the Applicant's substantive terms and conditions of service, including salary, allowances, pensionability and grade, and he stands to suffer no loss of emoluments as a consequence of the redeployment; and assuring the Applicant of a performance review within three (3) months of posting, in accordance with the Authority's performance management provisions under its Human Resource Policy and Procedures Manual. Further, they state that the redeployment was not imposed as a disciplinary sanction in the context of a disciplinary process, and no adverse record or finding of misconduct underpins the transfer. Rather, it was part of a wider institutional realignment affecting thirteen (13) other officers in different regions and functional areas, evidencing that the decision was organisation-wide and policy-driven rather than targeted or discriminatory against the Applicant.

20. The Respondents explain that their decision was informed by the fact that the 2nd Respondent currently operates with an approved staff establishment of approximately 250 positions, against which only about 115 officers are in post, translating to a vacancy rate of about fifty-four per cent (54%), resulting in a structural staffing deficit across regions and functions. The staffing shortage has been exacerbated by moratoria and directives from the Head of Public Service and the wider public service policy framework, which have frozen recruitment, delayed promotions and constrained the Authority's ability to fill existing enforcement and support vacancies, thereby compelling reliance on internal re-deployment as the only viable short- to medium-term measure. The staffing shortages have resulted in temporary closure or downscaling of operations in certain stations that could no longer be staffed safely and sustainably, including: the Garissa Region which was closed in 2017 due to operational constraints; Isebania Station which was

closed in 2023 due to lack of sufficient enforcement personnel; Moyale Station which closed in 2024 due to lack of sufficient enforcement personnel; and Mandera Station earmarked for temporary closure following recent redeployments necessitated by the continuing staffing crisis.

21. The Respondents argue that the decision to redeploy staff from the Eastern Region, including the Applicant, must be viewed within this broader context of public service resource constraints, and seen as a rational effort to ensure that limited officers are concentrated in locations and functions of highest enforcement impact.
22. The Respondents deny that the temporary closure of the Eastern Region regional office and redeployment of staff based there, the Applicant included, amounts to unlawful abolition of offices. They instead categorize it as an operational measure to manage resource scarcity while preserving the substantive posts within the approved establishment in line with the Public Service Commission Act.
23. They point out that Circular ED/16 explicitly states that the Eastern Region will be reactivated as a stand-alone regional structure once the 2nd Respondent receives the requisite approvals to fill existing enforcement and support vacancies, and that the region will then be staffed to adequate levels to ensure effective and sustainable operations in line with the Authority's Strategic Plan.
24. It is argued that grant of the orders sought by the Applicant and a reversal/stoppage of the decision to transfer the will severely constrain the 2nd Respondent's ability to discharge its statutory mandate, leading to operational paralysis in key enforcement areas. This would be

contrary to public interest because the Respondents would lose operational flexibility to prioritise high-risk borders, cargo hubs and transit corridors where counterfeit goods are most prevalent; the 2nd Respondent would be unable to optimise scarce human resources for maximum counterfeit-combat effectiveness, contrary to the expectations of the Public Service Commission (PSC) framework on efficient utilization of staff; the protection of intellectual property rights owners and consumer safety would be impaired, as counterfeit goods would more easily penetrate the market; and Kenya's enforcement regime at high-risk trans-shipment points would be weakened, thereby undermining national and regional trade facilitation commitments.

25. The Respondents categorically deny that there has been victimization of the Applicant over the seizure of goods incident that occurred in October/November 2025 or at all, breach of due process, procedural fairness or infringement of the Applicant's constitutional rights.
26. They state that the Applicant has not met the threshold for grant of the orders sought by demonstrating how the Respondents decision and action are unreasonable, ambiguous, an abuse of the law, made without power and/or have infringed on his constitutional rights and freedoms or at all. They insist that the impugned decision does not exhibit illegality, irrationality, procedural impropriety, abuse of power or violation of any legitimate expectation capable of protection by this Honourable Court.

DETERMINATION

27. The court directed that the judicial review application be heard by way for written submissions and both parties complied.

Issues for Determination

28. The Applicant, in his submissions dated 23rd February 2026 identified the following issues for determination:

- i. Whether the 1st respondent's decision is legally sound for violating the provisions of section 10(5) of the Employment Act, Chapter 226 of the Laws of Kenya.
- ii. Whether the 1st respondent's decision is constitutionally sound for violating the provisions of Article 234(a)(i) of the Constitution.
- iii. Whether the 1st respondent's decision is constitutionally sound for violating the provisions of Article 234(2)(t) of the Constitution.
- iv. Whether the Human Resource Policy and Procedures Manual, 2021, of the 2nd respondent is unconstitutional and inoperable.
- v. Whether the power to close a regional office or any office of the 2nd respondent is delegated to the 1st respondent.
- vi. Whether the 1st respondent's impugned decision violates Article 47 of the Constitution as read together with sections 7 & 9 of the Fair Administrative Action Act, Chapter 7L of the Laws of Kenya
- vii. Whether the 1st respondent's impugned decision was in the public interest.

29. In their submissions dated 10th March 2026, the Respondents identified the following issues for determination:

- i. Whether the redeployment and transfers effected through the 1st Respondent's letter of 22nd December 2025 and Circular ED/16 dated 23rd December 2025 were lawful and within the statutory powers of the Respondents.

- ii. Whether the Applicant was denied procedural fairness in the redeployment process, contrary to Article 47 of the Constitution and the Fair Administrative Action Act, 2015.
- iii. Whether the impugned decisions constitute an abuse of power, procedural impropriety, or a violation of legitimate expectation.
- iv. Whether the 1st Respondent's impugned letter and Circular usurped the constitutional authority of the Public Service Commission under Article 234 of the Constitution.
- v. Whether granting the Applicant's prayers would prejudice public interest and hinder the 2nd Respondent from fulfilling its statutory mandate under the Anti-Counterfeit Act, 2008.
- vi. Whether the current Chairperson of the Respondent can depone to matters relating to transfers and redeployments that occurred prior to his appointment.

30. The court having read the pleadings and submissions, discerned the issue for determination to be-

Whether the 1st Respondent's impugned letter and Circular was unlawful for lack of authority and usurped the constitutional authority of the Public Service Commission under Article 234 of the Constitution.

31. The applicant urged that the 1st respondent is not authorized under section 10 of the Anti-Counterfeit Act to dismantle or close a public office without the express resolution of the board of directors of the 2nd respondent; the 1st respondent by purporting to confer on the applicant a non-existent office in the public service has acted in excess of jurisdiction or power conferred on him by section 10 of the Anti-Counterfeit Act (herein after referred to as the Act); the 1st respondent by purporting to dismantle and close the 2nd respondent's eastern regional office without the prior express resolution of the board of directors of the 2nd respondent and

consultation has acted in excess of jurisdiction and power vested in him under section 10 of the Anti-Counterfeit Act; It is the Respondents' case that the transfers and redeployments contained in Circular ED/16 were lawful, fell squarely within the statutory mandate of the Respondents, and were grounded in the Authority's Human Resource Policy and Procedures Manual, the Anti-Counterfeit Act and the applicable provisions of the Public Service Commission Act, namely:

- i. Section 10(3)(c) – (e) of the Anti-Counterfeit Act which provides that the Executive Director shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Authority, the supervision of inspectors and the implementation of the Act, which necessarily includes rational deployment of staff to meet enforcement needs.
- ii. Section 27 and Part VIII of the Public Service Commission Act which recognises deployment, transfer and related human resource actions as management tools, and requires that any organisational restructuring or abolition of offices be preceded by due process including deployment, transfer, removal or retirement of affected public officers, thereby affirming the primacy of redeployment as a lawful first resort.
- iii. the Public Service Commission's general principles on human resource management, which obligate the 2nd Respondent Authority to utilise available staff efficiently, align staffing with approved organisational structures and strategic plans, and permits it to deploy or transfer officers of the same grade from one duty station to another to meet operational requirements without such movement constituting a demotion, disciplinary sanction or constructive dismissal.
- iv. the 2nd Respondent's Human Resource Policy and Procedures Manual (paragraphs 2.35.1 and 2.36.3-2.36.5) which expressly provides for management-initiated transfers,

posting and redeployment, stipulating requirements on written communication, notice periods and performance review timelines. These internal policies operationalise the general public service framework at the Authority level.

32. The Respondents defended their decision to redeploy the Exparte Applicant by stating that, as a junior manager within the Enforcement Directorate, the Applicant is subject to the Authority's legitimate operational decisions on posting and deployment and holds no contractual or statutory entitlement to serve in any particular region or station, provided his grade, remuneration and core professional functions remain intact in line with public service norms. The 1st respondent is the executive director envisaged under section 10 of the Act to wit- '10. There shall be an Executive Director of the Authority who shall be appointed by the Board, and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.(3)The Executive Director shall —
- (a)be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board;
 - (b)be the secretary to the Board;
 - (c)subject to the directions of the Board, be responsible for the day to day management of the affairs of the Authority;
 - (d)be responsible to the Board generally for supervision of inspectors; and
 - (e)be responsible to the Board generally for the implementation of this Act.(Emphasis on the relevant roles of the Executive Director).

33. The role of the Board is as stated in section 7 of the Act as follows- ‘The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) formulate, with approval of the Cabinet Secretary, policies pertaining to the organisation, management and implementation of the objects of the Authority;
- (b) control, supervise and administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open a banking account or banking accounts for the funds of the Authority; and
- (g) invest any funds of the Authority not immediately required for its purposes in the manner provided for in section 21’’

34. Section 13 of the Act provides for delegation of the roles of the Board as follows-‘13. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise

of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.’’

35. The court finds that the Executive Director has unlimited management powers subject to the Board’s control. There is nothing placed before the court to prove that the 1st respondent acted beyond management powers as given under section 10 of the Act especially that –‘c)subject to the directions of the Board, be responsible for the day to day management of the affairs of the Authority;(d)be responsible to the Board generally for supervision of inspectors; and(e)be responsible to the Board generally for the implementation of this Act. Transfers are management prerogatives of the employer. the 1st respondent is in charge of day to day management pf the 2nd respondent and that would include transfers of staff.’

36. The exparte applicant was employed as a chief inspector (ML-1). The impugned letter dated 22nd December 2025 stated as follows- *‘RE: REASSIGNMENT TO HEADQUARTERS – STRENGTHENING ENFORCEMENT AND AIMS SYSTEMS- You are hereby transferred to the Anti-Counterfeit Authority Headquarters, where you will take up a strategic assignment to support the Enforcement Directorate in strengthening the Authority's national enforcement framework. In this capacity, you will play a key role in developing and implementing a robust capacity-building program for enforcement officers across the country, aimed at enhancing operational efficiency and professionalism in the field. In addition, you will provide critical support in the stabilization and optimization of the Anti-Counterfeit Information Management System (AIMS), a vital tool for improving intelligence gathering, case tracking, depot management, recordation of IPR and policy implementation. This assignment reflects the Authority's confidence in your skills and leadership in driving institutional effectiveness and*

contributing to the Director's agenda of achieving consistent, high-impact enforcement outcomes nationwide. This decision has been made in line with operational requirements and the developmental strategies to enhance ACA 's your professional growth within the Authority.

Your transfer has been effected in accordance with Sections 2.312, 2.35.1, 2.36.3, 2.36.4, and 2.36.5 of the Anti-Counterfeit Resource Policy and Procedure Manual, read together Counterfeit Act Ac as well as the Public Service Commission Act and its attendant regulations.

For seamless delivery and in line with section 2.36.9 of the ACA HR Manual, a twenty -one (21) days' notice of transfer is hereby given from the date of this letter. You are therefore required to report to your new duty station on January 13,2026. Please note that you will not or to votitBe73 2026 be paid transfer allowance since the distance between the old station and your new station is less than 40 kilometers. Your transfer is integral part of our institutional strategy to enhance operational flexibility and foster professional growth as provided under section 2.31.2 and 2.35.1 of the HR policy and procedure manual. Kindly note the new performance review and planning process will be developed within three months of your transfer as provided under section 2.71 of the HR manual. We trust that you will bring in your expertise and dedication to your new role, contributing positively to the objectives of the Authority. Your employment terms will remain the same apart from your house allowance, which shall be adjusted accordingly, I wish you success in your new duty station.''

37. The exparte applicant submits the above letter offended section 10 of the Employment Act. The applicant asserts and maintains that the 1s" respondent's impugned decision is illegal for being inconsistent with the provisions of section 10(5) of the Employment Chapter 226 of the Laws of Kenya. Section 10(5) aforesaid provides as follows:- "(5) Where 8. any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the

contract to reflect the change and notify the employee of the change in writing." The exparte applicant opined that the aforesaid section is couched in mandatory terms. That in the impugned decision of the respondent changed, inter alia, the job description of the applicant changed, the job description of the applicant (functions, roles, responsibilities) and the place of work (from Athi River to Nairobi). The court was not persuaded that the impugned letter changed the contract terms. The letter was simply a transfer/re-assignment. Transfer of employees is a management prerogative. The applicant was given 21 days' notice, which the court finds was sufficient notice to re-organise his personal affairs. The respondents explained the transfer and stated the impugned letter described the Applicant's new operational role and scope of work in the letter, namely capacity-building and AIMS stabilisation of digital/online enforcement operations at the 2nd Respondent's Headquarters, a role commensurate with his grade and professional expertise; preserving the Applicant's substantive terms and conditions of service, including salary, allowances, pensionability and grade, and he stands to suffer no loss of emoluments as a consequence of the redeployment; and assuring the Applicant of a performance review within three (3) months of posting, in accordance with the Authority's performance management provisions under its Human Resource Policy and Procedures Manual. I find the impugned letter was rational and within the management prerogative of the 1st respondent to transfer staff for organizational efficiency. In *Mutegi v Chief Executive Officer, Kenya Development Leather Council & another* [2024] KEELRC 1447 (KLR), the court held as follows: "... Courts have upheld the managerial prerogative, which includes the power to manage industrial capital and command labour. It includes the discretion in transfer of Employees, allocation of duties, disciplinary control, and regulation of working hours among others. 50. In *Raphael Kihara Ruthuku v Kenya Revenue Authority* [2019] e-KLR and *Mugo v. ASP Company Limited* [Appeal E103 of 2021] [2024] KEELRC 191 [KLR] [12th February

2024] [Judgment], the Courts upheld the managerial prerogative on transfer of Employees. Courts will not interfere with the prerogative, unless transfer is inhumane, actuated by malice or bad faith, or otherwise exercised unreasonably.’’ Section 43(3) and (4) of the Public Service Commission Act, No. 10 of 2017 provides as follows; ‘‘... (3) In effecting a transfer the following shall be taken into account— (a) the transfer shall lead to improved service delivery; (b) the interest of the children, if any, of the affected public officer; and (c) the transfer shall not be arbitrary. (4) Nothing in this Part shall apply to— (a) the posting of public officers from one station to another in their substantive capacities within ministries or departments; or (b) the transfer between ministries or departments of public officers in any office which is common to departments generally, which shall be effected by the authorized officers concerned in consultation, where necessary, with the Commission...’’The court held the impugned letter justified the transfer, gave 21 days notice and nothing is placed before the court to demonstrate the action of the respondents was unfair.

Whether the 1 respondent’s decision is constitutionally sound under provisions of Article 234(a)(i) of the Constitution.

38. The applicant submitted- The power and function to create public offices in the public service is vested in the Public Service Commission under the provisions of Article 234 (2)(i) of the Constitution which reads as follows: - establish and abolish offices in the public service;’’ This constitutional provision is also buttressed by Part IV of the Public Service Commission Act, Chapter 185 of the Laws of Kenya that runs from sections 25-30 and is headed ‘‘establishment and abolition of offices in the public service ’’. 19. The 1st respondent’s impugned letter of 22nd December 2025 and circular of 23rd December 2025 created an unknown, ambiguous and unclear office for the applicant in 20. 21. 22. the 2hd respondent. The applicant was employed as

an anti-counterfeit inspector with specific duties but what the 1st respondent has attempted to do is to change his job and make him an officer with no known job title in the establishment of the 2nd respondent. The applicant has provided the 2nd respondent's job titles and offices as appears in Career Progression Guidelines for Staff and there is no position as such that exists. That the 1st respondent by his impugned letter of 22nd December 2025 and circular of 23rd December 2025 created an amorphous office in the public service for the applicant, an act that is unconstitutional and statutorily stale for usurping constitutional and statutory power of the Public Service Commission.

39. Conversely, the respondents explained that their decision was informed by the fact that the 2nd Respondent currently operates with an approved staff establishment of approximately 250 positions, against which only about 115 officers are in post, translating to a vacancy rate of about fifty-four per cent (54%), resulting in a structural staffing deficit across regions and functions. The staffing shortage has been exacerbated by moratoria and directives from the Head of Public Service and the wider public service policy framework, which have frozen recruitment, delayed promotions and constrained the Authority's ability to fill existing enforcement and support vacancies, thereby compelling reliance on internal redeployment as the only viable short- to medium-term measure. The staffing shortages have resulted in temporary closure or downscaling of operations in certain stations that could no longer be staffed safely and sustainably, including: the Garissa Region which was closed in 2017 due to operational constraints; Isebania Station which was closed in 2023 due to lack of sufficient enforcement personnel; Moyale Station which closed in 2024 due to lack of sufficient enforcement personnel; and Mandera Station earmarked for temporary closure following recent redeployments necessitated by the continuing staffing crisis.

40. Article 234 of the Constitution states as follows- ‘234. Functions and powers of the Public Service Commission

(1) The functions and powers of the Commission are as set out in this Article. (2)The Commission shall—(a)subject to this Constitution and legislation—(i)establish and abolish offices in the public service; and(ii)appoint persons to hold or act in those offices, and to confirm appointments;’’

41. The 2nd respondent is created under Anti-Counterfeit Act. Section 3 states-‘1. There is hereby established an Authority to be known as the Anti-Counterfeit Authority.(2)The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—(a)suing and being sued;(b)taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;(c)borrowing and lending money; (d)charging fees for services rendered by it;(e)entering into contracts; and(f)doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done by a body corporate.’’ The court finds that the 2nd respondent is a legal entity with powers to manage its affairs including acquiring and abolishing its branches as it deems necessary and with the Board having power over its assets as stated in section 7 of the Act as follows-‘ The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—(a)formulate, with approval of the Cabinet Secretary, policies pertaining to the organisation, management and implementation of the objects of the Authority;(b)control, supervise and administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;’’ The Court finds that the place of

work /branch closed by the 1st respondent is not the office envisaged under Article 234 . That office would amount to a public officer occupying the office. What was closed was a branch of the 2nd respondent and not the office as envisaged under Article 234 of the Constitution. Indeed, branch offices of the 2nd respondent are envisaged under section 4 of the Act, which states the headquarters of the authority is in Nairobi.

42. In the upshot, I find no merit in the judicial review application. The transfer effected through the 1st Respondent's letter dated 22nd December 2025 is held as lawful, rational, procedurally fair, and in line with statute, Section 10(3) of the Anti-Counterfeit Act, 2008. The judicial review application is dismissed. Taking into account the existing employment relations between the parties, I order each party to bear own costs.

43. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 8TH
DAY OF MAY, 2026.

JEMIMAH KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Exparte Applicant: Ms Nyanjiri

Respondent:-Karbolo h/b Mochoge