



**Esbon & another v Board of Trustees National Social Security Fund; Cabinet Secretary,
Ministry of Labour and Social Protection & 16 others (Interested Parties) (Petition
E006 & E002 of 2024 (Consolidated)) [2025] KEELRC 478 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 478 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E006 & E002 OF 2024 (CONSOLIDATED)**

B ONGAYA, J

FEBRUARY 21, 2025

**IN THE MATTER OF ARTICLES 1, 2, 10, 19, 20, 22, 23 (3), 27, 28,
46, 75, 201, 232, 233, 234 AND 258 OF THE CONSTITUTION OF
KENYA, 2010**

**IN THE MATTER OF UNLAWFUL AND ILLEGAL
RECRUITMENT OF PERSONS WITHIN THE PUBLIC
SERVICE**

**IN THE MATTER OF THE NATIONAL SOCIAL SECURITY
FUND ACT NO.45 OF 2013**

IN THE PUBLIC SERVICE COMMISSION ACT, 2017

BETWEEN

PETER CHEGE ESBON 1ST PETITIONER

PETER THINDIU MUNENGE 2ND PETITIONER

AND

**BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY
FUND RESPONDENT**

AND

**CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL
PROTECTION INTERESTED PARTY**

ATTORNEY GENERAL INTERESTED PARTY

PUBLIC SERVICE COMMISSION INTERESTED PARTY



JAMES KANYI GITHAKA	INTERESTED PARTY
CHRIS EKAI LOKIPI	INTERESTED PARTY
SAMMY K KORIR	INTERESTED PARTY
BETHUEL BETT CHEMITEI	INTERESTED PARTY
ETTAH ACHIENG MUANGO	INTERESTED PARTY
ERIC TOO	INTERESTED PARTY
ABDULLAHI IBRAHIM	INTERESTED PARTY
MUTINDA MARIETTA SYOKAU	INTERESTED PARTY
EVANS OMBUI	INTERESTED PARTY
RONALD NYAMOSI	INTERESTED PARTY
MILLICENT AWITI	INTERESTED PARTY
HELLEN WASIKE	INTERESTED PARTY
KELLEN NJUE	INTERESTED PARTY
PAUL MWAURA	INTERESTED PARTY

JUDGMENT

1. The amended petition for 1st petitioner was dated 14.11.2024 and was filed for the petitioner through Mwale and Bietta LLP Advocates. Final submissions were filed for the petitioner and dated 19.12.2024. The consolidated petition for the 2nd petitioner was dated 23.01.2024 and filed through K & A Advocates LLP. The petitioners challenges the respondent's advertisement dated 10.11.2023 and 21.11.2023 because the vacancies advertised were with respect the human resource instruments that had not been approved by the Public Service Commission pursuant to its constitutional powers and functions in Article 234 of *the Constitution* and as provided for in the *Public Service Commission Act, 2017*. The petitioners prayed that the appointment of 4th to 17th interested parties to various managerial and general managerial positions were made in contravention of the order given on 15.02.2024 in ELRC Petition E003 of 2022 COFEC-Versus- National Social Security Fund Board of Trustees and Another [2022]eKLR by which order the respondent was ordered to submit its new human resource instruments for approval by the Commission.
2. The Court has considered the material on record together with the final submissions filed for the 1st petitioner and other parties as follows:
 - a. For 12th to 17th interested parties dated 30.01.2025 through J.M. Kimathi & Partners Advocates LLP.
 - b. For 4th to 11th interested parties through TOGOLAWS & Company Advocates and dated 10.02.2025.
 - c. For 1st and 2nd interested parties dated 10.02.2025 filed through Ms. Mary Mochoge, Senior Litigation Counsel, for Attorney General.
 - d. For the respondent dated 11.02.2025 filed through Miller and Company Advocates.



3. The Court has also considered the submissions made for the Public Service Commission, the 3rd interested party by the learned counsel by Ms. Wangeci Gichangi, Principal Legal Counsel, that at the time of recruitment for the vacancies not all positions human resource instruments had been approved by the Commission. Further, all the instruments were subsequently approved.
4. The partial consent between the Commission and the respondent was dated 28.03.2024 and was filed in Court 28.03.2024. It was agreed that the impugned advertisements and appointments of General Managers and Managers whose recruitment process had been completed be deemed to have been concluded in accordance with human resource instruments approved by the Commission because the appointed persons had met the requisite qualifications. Further, the Commission's replying affidavit of 14.03.2024 stating the Commission's approval of the instruments had not been obtained was withdrawn. The consent stated that for the advertisement of vacancies dated 21.11.2023, parties would consult and file a further consent in 21 days. The further consent dated 22.04.2024 and filed on 22.04.2024 as signed between the respondent and the Commission. It was agreed as follows:
 - a. That the grades as advertised on 21.11.2023 tally with the grades stipulated under the respondent's grading structure as approved by the Commission on 26.10.2023. The grading structure stipulates the position, names, and grade aligned to salary structure.
 - b. That there is no material discrepancy between the advertisement dated 21.11.2023 and the career progression guidelines approved by the Commission in February 2024.
5. The Court has considered the consents and further considered the petitioner's grievances, which were valid, but appear to have been cured by the consents. The Court finds that the petition would be marked as settled in view of the curative measures between the respondent and the Commission. In view that it was a public interest petition, each party to bear own costs of the proceedings.
6. In conclusion judgment is entered with orders the grievance is marked cured in view of the consents on record between the respondent and the Public Service Commission and each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 21ST FEBRUARY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

