



**Kipkorir (Suing as a Trustee of and/or on Behalf of Private Security Industry Association on Behalf of Membership to the Society) v Private Security Regulatory Authority & 4 others; National Private Security Workers Union (Interested Party) (Employment and Labour Relations Petition E011 of 2024) [2025] KEELRC 291 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 291 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E011 OF 2024**

**MN NDUMA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**JOHN KIPKORIR ..... PETITIONER  
SUING AS A TRUSTEE OF AND/OR ON BEHALF OF PRIVATE SECURITY  
INDUSTRY ASSOCIATION ON BEHALF OF MEMBERSHIP TO THE SOCIETY**

**AND**

**PRIVATE SECURITY REGULATORY AUTHORITY ..... 1<sup>ST</sup> RESPONDENT  
FAZUL MOHAMMED ..... 2<sup>ND</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF INTERIOR AND NATIONAL  
ADMINISTRATION ..... 4<sup>TH</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL  
PROTECTION ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**NATIONAL PRIVATE SECURITY WORKERS UNION ... INTERESTED PARTY**

**JUDGMENT**

1. The petition was filed by one John Kipkorir (suing as a trustee of and/or on behalf of Private Security Industry Association on behalf of membership of the society).



2. The Petitioner was aggrieved by the action by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of publishing Legal Notice PSRA/005/2023 amending the provisions of the *Private Security Regulation Act* and setting the minimum wage for private security guards.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents had further on 21/11/2023 published the aforesaid Legal Notice in the Daily Nation Newspaper under My Government which is sponsored by the Government of Kenya directing all private security firms to pay their security guards a minimum wage of Kshs. 30,000.00 before statutory deductions.
4. The Petitioner deposed that this action was not proceeded by any public participation. That effort by the Petitioner to seek audience of the 4<sup>th</sup> Respondent, Ministry of Labour and Social Protection vide a letter dated 28/8/2023 did not bear fruit.
5. That the Wage Order of 2022 is still in force and thus the wage order for 2023 would ideally come into effect upon the annulment of the Wage Order 2022.
6. That the National Assembly annulled *Legal Notice 108 of 2019* for lack of public participation on 19/11/2019.
7. That according to the said *Legal Notice No. 1250 of 2022* the day time private guard should earn a minimum wage of Kshs. 15,201.65 while night private guards should earn Kshs. 16,959.00.
8. That the said action violates Article 10(2) (e) 41 and 47 of *the Constitution*.
9. That sections 43, 44, 45, 46 and 47 of the *Labour Institutions Act*, provide a mechanism for review of wages of employees vide a General Wages Council established by the responsible Cabinet Secretary.
10. That the Respondents have violated these provisions by purporting to usurp the mandate of the General Wages Council.
11. That the petition has merit and it be granted as prayed: -
  - a. That the Legal Notice PSRA/005/2023 be quashed.
  - b. That a declaration be issued that the Petitioner's right to fair administrative action has been violated.
  - c. That a declaration that the Petitioner's right to fair labour practices has been infringed.
  - d. That a declaration that the Respondents acted ultra vires in publishing the Legal Notice PSRA/005/2023.
  - e. A declaration that the Respondents acted arbitrarily and illegally and in contravention of Article 10 and 118 of *the Constitution* of Kenya.
  - f. That the honourable court be pleased to award the Petitioner general damages against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to be assessed by the court.
  - g. A declaration be made that it is the responsibility of the Ministry of Labour to come up with minimum wages regulation, enforcement and gazettment and not the responsibility of the 1<sup>st</sup> Respondent.
  - h. The costs of this petition and interest.
12. The 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection to the suit that this suit is sub judice for reasons that the issues canvassed herein are currently under active litigation at the Employment and



Labour Relations Court at Nairobi in Judicial Review No. E043 of 2023 which matter was filed on 4/12/2023 before this suit was filed.

13. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents also filed grounds of opposition dated 4/6/2024 as follows:
1. That no claim or allegation has been made against the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent in the petition and their enjoinder in this suit is erroneous as this is a dispute between the Petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  2. That the Petitioner has not demonstrated how the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents violated his labour rights and those of his representatives under Article 41 of *the Constitution* of Kenya.
  3. That the petition violates the doctrine of sub judice as there were two matters pending before the court when the same was filed, being ELRC Judicial Review no. E043 of 2023 and High Court Constitution Petition E002 of 2024.
  4. That the alleged substituted Petitioner, Mr. Cosmas Mutava, has not provided any evidence and satisfied the court that he has the requisite authorization from the people he purports to represent.
  5. That the Petitioner has not exhausted the internal remedies provided under section 43 of the Private Security Regulations *Act 13 of 2016* which provides any person aggrieved by the decision of the authority to appeal to the Cabinet Secretary. No appeal was made to the 4<sup>th</sup> Respondent by the Petitioner.
  6. That the Petitioner has not demonstrated how Legal Notice No. PSRA/005/2023 violates Articles 29 and 40 of *the Constitution*. Rather, the Legal Notice aims to protect the dignity of all private security guards.
  7. That the Petitioner has not demonstrated how Legal Notice No. PSRA/005/2023 violates Article 41 the right to fair labour practices.
  8. That there is no evidence tendered to demonstrate how the Petitioner's right to fair administrative action has been violated.
  9. That the petition raises no cause of action against the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents and should therefore be dismissed as against them with costs.
  10. That the petition lacks merit and should be dismissed in its entirety with costs.
14. The matters raised in the Preliminary Objection and grounds of opposition have the potential to determine this petition and as guided by the Court of Appeal in the matter of Owners of the Motor Vessel „Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, the court has considered the same as follows:

The Petitioner abandoned the Petition and was allegedly substituted by one Mr. Cosmas Mutava. The issue that arises is whether a suit once abandoned by the person who files it may survive so as to be taken over by another person. Order 1 r 10(1) provides:-

“where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit”



15. In the present matter, the petitioner without giving any reasons simply abandoned the suit and one Cosmas Mutava purported to step in the shoes of the petitioner without providing any reasons for the abandonment by the petitioner or any written authority by the petitioner to replace him in the matter. The court finds that the abandonment of the suit constituted a withdrawal of the petition since the petitioner did not have co-petitioners. The court has not been provided with any basis to exercise its discretion to revive the suit and substitute the petitioner. This is in view especially of other matters with the same cause of action having been filed in this court and the High Court earlier and same were still pending determination.
16. The court finds that the provisions of CPR above apply to a constitutional petition filed under Mutunga Rules.
17. Accordingly, the action by the petitioner is equivalent to abandonment or withdrawal of the petition in the absence of any application by the petitioner for substitution of himself by another person with proper reasons provided.
18. In the present matter the alleged successor of the Petitioner Mr. Cosmas Mutava did not file any authority from the Petitioner or any person in respect of whom the petition had been filed to satisfy the court that he had the requisite locus standi to revive an abandoned suit.
19. Furthermore, the court is satisfied that the Petitioner violated the doctrine of sub judice and this is presumed to be the real reason why this petition was abandoned. The similar matters raising the same dispute were filed in ELRC Judicial Review No. E043 of 2023 and High Court Constitutional Petition E002 of 2024 and the same were still pending as at the time this matter was referred to judgment.
20. The court has come to the inevitable conclusion that this suit abated once it was abandoned by the Petitioner and no other person could purport to take it over in the circumstances depicted in this matter.
21. Though the sub judice rule does not lead to striking off of a matter but rather same is stayed pending hearing and determination of matters earlier filed, in the circumstances of this case, the Petitioner having abandoned the suit the same stood to be closed for lack of interest to prosecute by the dominus litis being the Petitioner.
22. For the purpose of completion, from the pleadings set out in the petition itself, even if the petition had subsisted the Petitioner, he had not sufficiently demonstrated any threat to and/or violation of his human rights or fundamental freedoms set out in the petition being Articles 10, 29, 40, 41, 47 and 118 of *the Constitution* of Kenya 2010 to disclose a proper cause of action.
23. Accordingly, the petition lacked merit and was an abuse of the court process demonstrated by apparent lack of interest in the matter by the Petitioner.
24. The court was also informed in the submission that the subject matter of the petition had been overtaken by events and that the court was indeed engaged in a moot exercise.
25. In the final analysis, the petition was abandoned by the Petitioner and is struck out by the court and in any event the same lacked merit and stood to be dismissed which the court proceeds to do.
26. The court grants no orders as to costs.

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025**

**MATHEWS NDUMA**

**JUDGE**



Appearance:

Mr. Aketch for Petitioner

Mr. Okal for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Ms. Achieng for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents

Mr. Wati for Interested Party

Mr. Kemboi – Court Assistant

