



REPUBLIC OF KENYA



**Sheria & 13 others v Cabinet Secretary, Ministry of Labour and Social Protection & 7 others;
Justice & 2 others (Interested Parties); (Isla & another (Amicus Curiae) (Employment and
Labour Relations Petition E038 of 2023) [2025] KEELRC 1527 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1527 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E038 OF 2023**

**MN NDUMA, J
MAY 26, 2025**

BETWEEN

**LEGAL ADVICE CENTRE T/A KITUO CHA SHERIA 1ST PETITIONER
HAKI JAMII RIGHTS CENTRE 2ND PETITIONER
JOHN NG'ANG'AMUIGAI 3RD PETITIONER
FEITH MURUNGA SHIMILA 4TH PETITIONER
EUNICE WANGUI NJENGA 5TH PETITIONER
CELESTINE MUSAVAKWA 6TH PETITIONER
PAULINE MUTHONI KARIUKI 7TH PETITIONER
MEDIATRICKS KHASANDI 8TH PETITIONER
LUCY WAMBUI NG'ANG'A 9TH PETITIONER
HANNAH NJERI NGUGI 10TH PETITIONER
BRENDA ANYANGO 11TH PETITIONER
JANE WANJIKU KAGIMBI 12TH PETITIONER
CATHERINE MUTURI 13TH PETITIONER
PURITY MBOGO 14TH PETITIONER**

AND

**CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL
PROTECTION 1ST RESPONDENT
KENYA NATIONAL EMPLOYMENT AUTHORITY 2ND RESPONDENT**



**CABINET SECRETARY, MINISTRY OF FOREIGN AFFAIRS 3RD
RESPONDENT**

**DIRCTORATE OF IMMIGRATION AND REGISTRATION OF
PERSONS 4TH RESPONDENT**

**NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA) 5TH
RESPONDENT**

SPEAKER NATIONAL ASSEMBLY 6TH RESPONDENT

SPEAKER SENATE 7TH RESPONDENT

THE ATTORNEY GENERAL 8TH RESPONDENT

AND

OF JUSTICE INTERESTED PARTY

AGENCIES IN KENYA INTERESTED PARTY

EMPLOYMENT AGENCIES INTERESTED PARTY

AND

IN AFRICA (ISLA AMICUS CURIAE

KENYA (FIDA-KENYA AMICUS CURIAE

RULING

1. The petition is founded on various aired and documented reports by International and Kenyan Media on violation of human rights for migrant domestic and other workers in the Middle East countries which include: Bahrain, Bangladesh, Iraq, Jordan, Kuwait, Lebanon, Omani, Qatar, Saudi Arabia and United Arab Emirates among others.
2. The Petitioners include Legal Advice Centre T/A, Kituo cha Seria, Haki Jamii Rights Centre and 12 others; whereas the Respondents include various government organs, ministries and institutions named 1st to 8th Respondents. Interested parties included in the suit are commission on Administration of Justice, Association of skilled Migrant Agencies Kenya and Kenya Association of Private Employment Agencies.
3. The Petitioners have raised in the petition serious and multivariuous human rights and fundamental freedoms violations of Kenya Immigrant workers in the named countries and seek a raft of remedies set out at paragraph 1 to 27 meant to address alleged gross human rights and fundamental freedoms violations set out in the petition.
4. It is specifically, pleaded that this is a matter of great public interest and the court is enjoined to make an order to that effect under prayer 27 and therefore make no order as to costs.
5. The applications before court are one dated 16th October 2024, by KUDHEIHA workers union for joinder as an Interested Party stating that it is a trade union founded in 1942 and registered in 1951 that champions for the rights and welfare of domestic workers, Hotel workers, educational institution workers and Hospital workers. That union members in the domestic work sector forms the greatest percentage of migrant workers to the Middle East who are most vulnerable to modern



day slavery, human trafficking, forced labour and other violations of internationally recognized labour rights, standards and violations of attendant human rights and freedoms. That the core mandate of the Intended Interested Party makes it a necessary party in this suit and it seeks to advance public interest and the interest of domestic workers in this matter. That the union be granted opportunity to highlight issues which it has special knowledge of by fact of its holding an office in the sectors affected by violations the subject of this suit.

6. The other application is by initiative for strategic litigation in Africa (Isle) and Federation of Women Lawyers in Kenya (Fida – Kenya) as 1st and 2nd Amicus Curiae. That the joint application has satisfied the criteria for leave to be admitted in these proceedings, as joint amicus curiae set out in our Constitution and elaborated in several decision of the superior courts including the Supreme of Kenya and in particular in the Supreme Court decision in the matter of Trusted Society of Human Rights Alliance versus Mumo Mutemu and 5 others [2015] eKLR as follows: -

“The role of an amicus is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn in return for the privilege of participating in the proceedings without having to qualify as a party, an amicus has a special duty to the court. That duty is to provide cogent and helpful submission that assist the court. The amicus must not repeat arguments already made but must raise new contentions; and generally, these new contentions must be raised on the data already before the court. Ordinarily, it is inappropriate for an amicus to try to introduce new contentions based on fresh evidence.”

7. The joint applicants submit that they have the relevant expertise and special knowledge in the subject matter of the suit and are therefore suited to be joined in this suit.
8. The Petitioners, and Interested Parties are not opposed to the applications for joinder. The 1st, 2nd, 3rd, 4th and 5th Respondent are opposed to the joinder and filed grounds of opposition in respect thereof as follows: -
 - i. The intended amicus curiae and interested party have not set out their personal stakes/interests they have in the matter.
 - ii. The intended amicus curiae and interested party have not demonstrated the prejudice they would suffer in the event joinder is denied.
 - iii. The joinder of the intended amicus curiae and interested party will only serve to vex the parties and/or convolute the matters with unnecessary new matters and grounds not envisaged in the pleadings/petition.
 - iv. The intended amicus curiae and interested party have not demonstrated what they wish to bring into these proceedings are any different from those of the other parties already on record.
 - v. The intended amicus curiae and interested party have not in their application set out their cases and/or submissions they intend to make before the court and the relevance of their cases/submissions.
 - vi. The intended Interested party has not demonstrated any of the petitioners are its members and that they remit union dues or agency fees at all. The intended interested party is thus a busy body.
 - vii. The intended amicus curiae and interested party’s applications are incompetent and an abuse of the court process.



- viii. That it is in the interest of justice and the spirit of the Constitution that the intended amicus curiae and interested party's applications be dismissed with costs
9. The 6th and 7th Respondents have also filed grounds of opposition to the Application on grounds that the Applicants have not established the requisite grounds set out by the Supreme Court of Kenya in *Muruatetu & Another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated) (2016) (KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)*

to wit that the Applicants stand to be prejudiced if they are not /is not enjoined as amici curiae and that the applicants intend to introduce novel aspects of the legal issue in question that will aid the development of law and add value to the proceedings'.

10. 1ST 2ND 3RD 4TH 5TH and 8th Respondents Written Submissions
11. It is the 1st 2nd 3rd 4th 5th and 8th respondents' submission that the legal framework governing amici curiae was elaborated in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 2 others (Petition 12 of 2013) (2015) KESC (Civ) (17 June 2015)* where the court considered the role of amicus curiae and set out the guiding principles that;

An amicus brief should be limited to legal arguments. The relationship between amicus curiae, the principal parties and the principal arguments in an appeal, and the direction of amicus intervention, ought to be governed by the principle of neutrality, and fidelity to the law. An amicus brief ought to be made timeously, and presented within reasonable time. Dilatory filing of such briefs tends to compromise their essence as well as the terms of the Constitution's call for resolution of disputes without undue delay. The Court may therefore, and on a case- by case basis, reject amicus briefs that do not comply with this principle. An amicus brief should address point(s) of law not already addressed by the parties to the suit or by other amici, so as to introduce only novel aspects of the legal issue in question that aid the development of the law. The applicant ought to be neutral in the dispute, where the dispute is adversarial in nature. The applicant ought to show that the submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available. The applicant ought to draw the attention of the Court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the applicant ought to show that there is no intention of repeating arguments already made by the parties. And such new matter as the applicant seeks to advance, must be based on the data already laid before the Court, and not fresh evidence. A party seeking to appear in any proceedings as amicus curiae should prepare an amicus brief, detailing the points of law set to be canvassed during oral presentation. This brief should accompany the motion seeking leave to be enjoined in the proceedings as amici.

12. It is argued that in determining whether to grant leave to individuals or organizations seeking to join as amici curiae, the court considers whether the proposed amici have specialized knowledge or insight into the issues being litigated and whether their participation would assist the court in reaching a just decision. That the applications by ISLA and FIDA Kenya are premised on their ability to provide insights and expertise regarding the plight of migrant workers and the legal implications surrounding their treatment. However, it is vital to demonstrate that they have specialized knowledge relevant to the issues raised by the Petitioners.



6th Respondent's Written Submissions

13. The 6th Respondent submits that threshold of joinder as was laid by the Supreme Court in the case of *Muruatetu & Another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated) (2016) (KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)* is that;

The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of nonjoinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court'

14. The 6th Respondent argues that the intended interested parties have not demonstrated to this honourable court their interests and how they will be affected if it does not by itself appear in the proceedings to champion its cause. They have sought joinder into these proceedings without showing the prejudice they stand to suffer in case of non-joinder.

7th Respondent's Written Submissions

15. The 7th Respondent relies on the case of *Muruatetu & Another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated) (2016) (KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)* where the Supreme Court held that;

We would emphasize, as we did in *Mumo Matem*, that amicus participation is a matter of privilege, rather than of right. It is also important to note that in certain circumstances, a party may fail to qualify for the status of amicus curiae, and at the same time fail to qualify as intervener. This, therefore, dispels the notion that an applicant wishing to be enjoined in proceedings in which he/she is not directly a party has to be enjoined as amicus curiae or intervener. Indeed, in some instances it would be more appropriate for an applicant not to participate in proceedings at all, especially where such applicant does not stand to be prejudiced in anyway if he/she is not enjoined; or adds no value to the proceedings; or increases the likelihood of diverting the natural course of the proceedings'

16. It is argued that the Applicants have not demonstrated how they will be prejudiced if they are not enjoined as amici curiae. That the 7th Respondent has demonstrated that the Petitioners can adequately canvass the issues raised by the Applicants as they touch on the rights and freedoms of migrant workers.

Determination

17. Upon consideration of the application by the Interested Party and that by joint amicus curiae, this court finds that the subject matter of the suit falls within the mandate of the Applicants. That the Applicants have had extensive experience in the subject matter and possess therefore relevant matters of law and fact to which attention of the court would not otherwise be drawn.



18. The union in particular has many of its members, who travel to middle east and are affected by the matters raised in this petition and so the union has the mandate to represent the interest of affected migrant workers in this petition and in fact the court considers the union a necessary party in these proceedings without whom matters in special knowledge of the union could not be placed before court.
19. The Applicants have set out in their submissions matters which they will address before court to give the court a better chance to render justice in this matter in its final judgment.
20. The union in particular satisfied the threshold for joinder as an Interested Party set by the Supreme Court in the case of Muruatetu and another versus Republic Kenya National Commission on Human Rights and 2 others (Interested Parties) Death penalty project (Intended Amicus Curiae) Petition 15 and 16 of 2015 (consolidated [2016] KESC 12 KLR Civ (28 January 2016 (Ruling) where the Court held as follows:-

The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”
21. The Amicus Curie have also satisfied the threshold set in the Mumo Matemu case (supra) for joinder and in particular their expertise, Knowledge and neutrality and that they would not be merely repeating what other parties have placed before court.
22. In the final analysis the court finds that the Applicants have set out the stake they have in the subject matter of the suit. That the stake or interest by the Applicants is clear and identifiable and is close enough and not merely peripheral. That the joinder of the Applicants to the suit would allow them to place matters before court which otherwise the court would not be aware of and the possible prejudice by the intended Applicants and the constituencies they represent. The Applicants have set out the respective submissions they intend to make before court and the court is satisfied that these submissions by the applicants are not merely a replication of what the other parties will be making before court.
23. Accordingly, the application for joinder as interested party and joint amicus curiae have merit and are allowed.

DATED AT NAIROBI THIS 26TH DAY OF MAY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Caroline Kituku and Philly Onyango Janet Advocate for the intended joint amicus curiae

Endra Aiko for Intended Interested Party (KUDHEIHA workers)

Hon. Attorney General for the Respondents

Mr. Kemboi – Court Assistant

