



**Abdille v Social Health Authority (SHA) & 3 others (Petition
E078 of 2025) [2025] KEELRC 2027 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2027 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E078 OF 2025**

**B ONGAYA, J
JULY 10, 2025**

BETWEEN

SAID OMAR ABDILLE APPLICANT

AND

SOCIAL HEALTH AUTHORITY (SHA) 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

CABINET SECRETARY, MINISTRY OF HEALTH 4TH RESPONDENT

RULING

1. The 1st, 2nd and 4th respondents filed an application by the notice of motion dated 20.06.2025 through Principal Counsel Beatrice Akuno for the Attorney General. The application was made under Rules 45, 47 and 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and Articles 41, 43(f), 47, 50, 53(1)(b) of *the Constitution* of Kenya, and all enabling provisions. They seek the following orders:
 - i. Spent.
 - ii. That the Honourable Court be pleased to grant a stay of execution of the Ruling dated 29th May 2025 and consequential orders emanating therefrom pending hearing and determination of the application.
 - iii. That the Honourable Court be pleased to review and set aside, stay, vary, vacate, substitute or modify as may be appropriate and in the interest of justice the Ruling dated 29th May 2025 and consequential orders emanating therefrom.



- iv. That the Honourable Court be pleased to consolidate the suit herein, together with Nairobi ELRC Petition No. E042 of 2025 – Patrick Kiogora Mwirigi and Others –vs- Social Health Authority & Others and Nairobi ELRC Cause No. E1030 of 2023 – The Kenya Union of Commercial Food and Allied Workers vs. NHIF, The Ministry of Health and SHA, and the consolidated case be heard and finally determined by a single judge.
 - v. That this Honourable Court be pleased to grant any other orders that it may deem fit and just.
 - vi. That costs of this application be in the cause.
2. The application was supported by the affidavit of Dr. Mercy Mwangangi, the Chief Executive Officer of SHA. It was urged and stated as follows:
- a. The petitioner/respondent herein filed a notice of motion under certificate of urgency and a petition, both dated 28.05.2025, seeking various orders.
 - b. The notice of motion application was heard inter partes on 21.05.2025 and a Ruling touching on both the motion application and the petition was delivered by the Hon. Justice Byram Ongaya on 29.05.2025.
 - c. Aggrieved, the respondents/applicants seek to review the said Ruling, which has in effect rendered the 2nd respondent/applicant's ongoing internal recruitment process null and void, and compelled the corporation to re-start recruitment of its staff contrary to the provisions of subparagraphs 6(2) and 6(4) of the First Schedule of the Social Health *Insurance Act*, 2023.
 - d. The said Ruling failed to consider that some positions had already been filled, and the successful candidate had already assumed office at a time when there was no order stopping the recruitment.
 - e. The subject Ruling also failed to consider other rulings or orders of this Honourable Court on the same issues on transition and recruitment of staff to the SHA, such as in an interlocutory decision in Nairobi ELRC Cause No. E1030 of 2023 – The Kenya Union of Commercial Food and Allied Workers vs. NHIF, The Ministry of Health and SHA by the Hon. Justice Manani, and in Nairobi ELRC Petition No. E042 of 2025 – Patrick Kiogora Mwirigi and Others vs. Social Health Authority & Others by this Honourable Court.
 - f. The Orders issued by this Honourable Court in Nairobi ELRC Petition No. E042 of 2025 (supra) and the subject Ruling in the instant suit contradict each other in that, while the Ruling compels the Authority through a writ of mandamus to advertise all vacancies in its approved establishment through an open, fair, competitive and transparent process in accordance with the law devoid of restrictions and limitations, the Orders in Nairobi ELRC Petition No. E042 of 2025 (supra) stay the advertisement, recruitment, short-listing, interviewing or appointment to vacant positions within the SHA staff establishment.
 - g. In Nairobi ELRC Cause No. E1030 of 2023, Manani, J issued a Ruling wherein he found that it is within the statutory mandate of the SHA under the Social Health *Insurance Act* to undertake recruitment of its staff. Further, the Hon. Court declined to stop the transition process under the principle of public interest.
 - h. The above mentioned Rulings and Orders have put the Authority in a quandary as to which order to implement in carrying out the recruitment of its staff.



- i. It is prudent and in the interests of justice that the suit herein, together with Nairobi ELRC Petition No. E042 of 2025 be consolidated with Nairobi ELRC Cause No. E1030 of 2025, the contradictory orders therein harmonized and the staff who had already been recruited and deployed be deemed to have been lawfully appointed. In addition, the consolidated case be heard by a single judge.
 - j. The Ruling has far-reaching implications on innocent third parties who successfully applied and were recruited to the positions of Directors and Deputy Directors in the SHA, and on other shortlisted applicants for the advertised positions. The said parties were not given an opportunity to be heard or their interests considered by the Court, thus being condemned unheard contrary to Article 50 of *the Constitution* of Kenya.
 - k. This application has been made within a reasonable time, in good faith and in a bid to safeguard the public interest and the applicant's operations, and to protect the legitimate expectation of the applicant's staff who had already been interviewed and appointed to the advertised positions. Furthermore, no appeal has been preferred in this matter.
 - l. An order for stay of execution of the Ruling dated 29.05.2025 is necessary in the circumstances of this case to safeguard the operations of the Authority from unnecessary disruptions that could negatively affect its core mandate and the delivery of healthcare financing to the public.
 - m. There is sufficient cause to review, vary or set aside the Ruling dated 29.05.2025, having regard to the overriding public interest which requires maintaining stability of the Authority to ensure smooth transition and operationalisation of the Corporation and ultimately, the absorption of the officers who will not be recruited by the Authority into the public service.
 - n. The urgency herein includes the uncertainty of the fate of the remaining former NHIF staff who had already applied to various vacant positions in the approved staff establishment of the Authority.
3. In response, the petitioner/respondent filed his replying affidavit sworn on 30.06.2025 through Duwane & Wethow Advocates. He urged as follows:
- i. The petition seeks to challenge the recruitment process commenced by the 1st respondent to former staff of the defunct NHIF into the SHA through an internal advert that limits or excludes other eligible and qualified Kenyans from applying for the advertised positions.
 - ii. The present application does not satisfy the conditions for the grant of a stay of execution. It has been brought in bad faith, and thus not deserving to be granted the orders sought.
 - iii. The grounds cited by the applicants do not meet the threshold for the grant of review or setting aside orders as intended in the ELRC (Procedure) Rules.
 - iv. In any event, the applicants have not demonstrated discovery of new and important evidence, and there is no error apparent on the face of the record or sufficient reason to warrant the review of this Court's order. In addition, the application entails a reappraisal of evidence and reanalysis of this Court's decision, which is beyond the scope of review jurisdiction and simply an appeal in disguise.
 - v. This is a matter of public interest that entails the recruitment of public officers, and allowing the application shall negatively prejudice the petitioner and the public at large in a way that cannot be restored, thereby rendering the petition dated 28.04.2025 nugatory.



- vi. With the defunct NHIF having faced numerous allegations of corruption, mismanagement and inefficiencies over the years, which contributed to its repeal and replacement with the SHA, limiting the recruitment and employment of staff to those of the former NHIF will likely lead to SHA facing similar challenges.
 - vii. This Court should therefore exercise its discretion to defend the dignity of this Honourable Court by upholding the constitutional rights at Articles 2, 10, 24, 27, 41, 47, 73, 232 and 258, and the Order issued on 29.05.2025.
 - viii. The orders sought in the instant application are untenable and unjustifiable, and should be dismissed with costs.
4. The parties submitted on the instant application before the Honourable Court on 02.07.2025.
 5. For the applicant it was submitted as follows:
 - a. The application seeks to stay implementation of orders given on 29.05.2025 that stayed the internal advertisement already done by the applicant. In the circumstances, the ruling sought to be reviewed put the applicant in a very difficult position in terms of its operations and its management. The applicant requires services of the employees who were employees of NHIF.
 - b. While the employees of the defunct NHIF are working for the applicant in the transition, the employees are anxious.
 - c. Further, the Court has made confusing decisions in various related suits filed about the same dispute. In Patrick Kiogora Mwirigi and 2 others –vs- Social Health Authority and 2 others ELRC Petition E042/2025 at Nairobi the court ordered that pending the return date or further orders of the Court there be stay of advertisement, recruitment, shortlisting, interviewing, selection or appointment with respect to vacant positions in the applicant’s (SHA’s) establishment. The Court also directed parties to compromise and for SHA to deliver to the petitioners therein specific documents set out in the order given on 24.04.2025. Further, Manani J in Kenya Union of Commercial Food and Allied Workers –Vs- National Health Insurance Fund, Cabinet Secretary for Health, and, Social Health Insurance Fund ELRC Cause E1030 of 2023 at Nairobi, delivered a ruling on 08.02.2024 with and ordered:
 - i. I decline to issue orders stopping the impugned transition process pending the hearing of the cause,
 - ii. Instead, I order that the Respondents involve the claimant in deliberations that will lead to the transition in question.
 - iii. I decline to issue orders to restrain the 3rd respondent from hiring new unionisable in the interim as this is the express statutory mandate of the 2nd Respondent which can only be questioned if there is evidence of breach of the law.
 - iv. I decline to issue an order purporting to stop the 2nd Respondent from declaring members of the Claimant who were employees of NHIF redundant or retiring or deploying them since the 2nd Respondent has no powers to act in this manner in respect of the employees of NHIF (now defunct) and there is no evidence placed before me to suggest that the 2nd Respondent has attempted to engage in such acts which will be ultra vires her powers.
 - v. Each party to bear own costs.



It was submitted that by the Said Manani J's orders SHA was allowed to recruit within its statutory authority. In that respect, the stay order should be granted for issues to be handled. That the application should be granted in view of the contradictory orders.

6. For the petitioner it was submitted as follows:
 - a. The ruling in the instant ELRC Petition E078/2025 made final orders and the Court is functus officio. The Court found that the internal advertisement was not competitive and the applicant SHA was directed to re-advertise because the employees of the defunct NHIF could not be automatically get absorbed by the applicant.
 - b. There is no conflict with orders in ELRC Petition E042/2025 which stayed recruitment.
 - c. Further, ruling in ELRC Cause E1030 /2023 did not apply because the advertisement that was challenged in the instant ELRC Petition E078/2025 is a new cause of action that was not in issue in the earlier ELRC Cause E1030/2025. The instant case was about impugned internal advertisement.
 - d. There is no established ground for review and the applicants, if dissatisfied with the ruling and orders herein, ought to have appealed. The Court should not address emotions of the staff of the defunct NHIF staff but should uphold the law.
7. The Court has considered the parties respective positions and returns as follows.
8. To answer the 1st issue, the Court returns that indeed, the applicant has failed to establish any known reason for review. The applicant has not shown an error apparent on record or fresh evidence or manifest injustice that would justify the review as applied for. The applicant appears to urge that it is dissatisfied by the ruling and final orders therein given on 29.05.2025. As urged for the petitioner, such dissatisfaction does not justify a review but could entitle the applicant to appeal. By that finding the application should fail. Rule 61 of the ELRC (Procedure) Rules envisages consolidation if it is practical and appropriate to proceed with the issues raised in the suits simultaneously. That appears not possible in the circumstance that the instant petition has been conclusively determined.
9. To answer the 2nd issue, the instant petition was finally determined by the ruling delivered on 29.05.2025. The petition having been conclusively determined, it appears to the Court that it would be misconceived for the applicant seek consolidation with pending cases. Nothing is left of the instant petition to justify consolidation with the matters said to be pending before the Court.
10. To answer the 3rd issue, it appears to the Court that the ruling and orders in the said ELRC Cause E1030 /2023 are reinforced and not in conflict with the orders given herein in the ruling of 29.05.2025. As urged for the applicant, in the temporary orders in ELRC Cause E1030 /2023, the Court found that the applicant herein was entitled to recruit for the vacancies. The ruling and orders herein given on 29.05.2025 find as much only that the applicant is given directions and a step by step manner of undertaking the recruitment and which in the Court's opinion, was the main issue in dispute in the instant petition. In particular, the issue was whether the applicant could proceed by way of the purported internal advertisement that was impugned or whether it had to be by way of an open competitive advertisement. The Court in the ruling of 29.05.2025 stated as follows:
 - “ 12. Accordingly the Court returns that the effect of provisions of the said paragraph 6 of the First Schedule about the transitional destiny of the staff of the defunct NHIF appears to be as follows:



- a. The staff do not enjoy automatic transition as staff of the 1st respondent.
- b. The 1st respondent must first ensure that its approved establishment is in place as found earlier in this ruling. Concurrently, the 1st respondent must review qualifications of all staff of the defunct NHIF staff, preferably manifested in an appropriate “Defunct NHIF Staff Qualifications Report.”
- c. Next, the 1st respondent’s Board should initiate an open competitive recruitment and appointment process as found earlier herein per provisions of the *Public Service Commission Act, 2017*. The staff of the defunct NHIF who consider themselves qualified for any of the advertised vacancies in the 1st respondent’s approved establishment are entitled to apply. It appears that such individual staff is eligible to apply for as many of the vacancies in the approved establishment that will be advertised as long as the staff considers that the prescribed qualifications per the open advertisement are met. In that way, the staff should enhance their chances of employment on priority as envisaged in the transition.
- d. In undertaking the competitive recruitment, the 1st respondent must give priority appointment to suitably qualified staff of the defunct NHIF. The effect appears to be that if such staff are qualified for any of the openly advertised vacancies and has opted to apply, then they will get appointment in priority to equally and suitably qualified candidates but not being staff of the defunct NHIF.
- e. After conclusion of the competitive recruitment and appointments, any of the staff of the defunct NHIF having applied but not recruited and appointed shall be given an option to retire from the public service or to be redeployed within the public service. Similarly, staff opting not to participate in the open competitive recruitment will be accorded the same option. For staff opting not to apply and taking into account the prescribed qualifications review as should be manifested in what the Court referred earlier herein to as “Defunct NHIF Staff Qualifications Report” as measured against the qualifications of various jobs in the approved staff established, the offer to retire from or be redeployed within the public service will be made. It is in that sense that the Court has found that the processes of reviewing the qualifications of the defunct NHIF staff and the approval of the 1st respondent’s staff establishment ought to be undertaken nearly concurrently because the two would complement each other in guiding decision making. It further appears to the Court that until the competitive open recruitment and appointment for the various jobs in the 1st respondent’s approved establishment is completed and successful candidates assume duty, the defunct NHIF staff would



continue in temporary service of the 1st respondent. Accordingly, the Court considers that staff of the defunct NHIF (those applying for the openly and competitively advertised jobs, and those opting not to apply at all) will be given the offer to opt to so retire from the public service or to get redeployed within the public service, after conclusion of the said open and competitive recruitment and appointment. The specific date appears to the Court to be the date the openly and competitively recruited staff of the 1st respondent assume or report on duty – ensuring that there will be no break in service delivery by the 1st respondent.”

11. To answer the 4th issue, it appears to the Court that no staff of the defunct NHIF has been prejudiced within the implementation of the transitional provisions as elaborated in the foregoing paragraph of this judgment. All staff of the defunct NHIF staff remain in the service of the applicant until the applicant undertakes and concludes the said competitive recruitment process. Similarly, it is that service delivery for the applicant will not be prejudiced in the transition because all staff of the defunct NHIF are available to serve until the competitively recruited and appointed staff are in place. It should otherwise be obvious that the staff purportedly recruited pursuant to the internal advertisement cannot hold on to the illegal and unconstitutional process to justify the illegitimate purported recruitment and appointments. The correct position is that they are entitled to serve as temporary staff of the applicant until their respective destiny is determined in the due transitional process already set out by the Court.
12. To answer the 5th issue, as relates temporary orders in ELRC Petition E045/2025, it is that they are complimentary and must be understood as consistent and not contradictory with the final orders in the instant petition so that there should be no conflict in that respect. The interim orders in Petition E045/2025 must be understood within their express terms and circumstances. There were specific concerns raised in that petition. The Court temporarily stopped recruitment in that petition in view of grievances about approval of staff establishment by the applicant’s board; provision of exit package for staff of the applicant who would not be absorbed; provision of particulars of the public service entities the defunct NHIF not absorbed or opting not to exit public service would be deployed to – ranks, grades and remuneration applicable accordingly; and, parties therein were directed to compromise. It appears that the final orders in the ruling in the instant petition do not conflict with the interim order in ELRC Petition E042/ 2025. The ruling and orders in the instant case ideally dealt with how the recruitment and appointments in the transition from defunct NHIF to SHA should be undertaken. The issues in ELRC Petition E042/2025 are about certain concerns and grievances of the defunct NHIF staff (independent of the manner of transitional recruitment and appointments – competitive or internal) that nevertheless, remain valid, despite the ruling and orders in the instant petition. In any event, any difficulty arising from orders given in ELRC Petition E042/2025, if at all an impediment to compliance with final orders in the ruling of 29.05.2025 herein can be liable to variation in an appropriate application in the said ELRC Petition E042/2025.
13. While making the findings, it is paramount and not lost to the Court’s consideration and attention that in the transition, the applicant must continue rendering service and which is not impaired to the extent that the staff of the defunct NHIF are in place until the transition is undertaken and concluded along the directions set out in the legislation and elaborated in the ruling and final orders herein.

In conclusion, the application for consolidation and review by the notice of motion dated 20th June 2025 is hereby dismissed and each party to bear own costs of the proceedings.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
THURSDAY 10TH JULY, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

