

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CONSTITUTIONAL PETITION NO. E038 OF 2023

IN THE MATTER OF THE KENYAN STATE'S EXPOSURE/ SUBJECTING OF KENYAN
MIGRANT WORKERS IN THE MIDDLE EAST TO MODERN DAY SLAVERY AND
HUMAN TRAFFICKING

AND

IN THE MATTER OF THE IMMEDIATE SUSPENSION OF ALL LABOUR MIGRATION
TO THE MIDDLE EAST UNTIL THE STATE MEETS SOME BASIC MINIMUMS

AND

IN THE MATTER OF THE STATE'S DISREGARD/ NEGLECT OF THE MANY CASES OF
DEATHS AND ABUSE IN THE MIDDLE EAST

AND

IN THE MATTER OF THE KENYAN STATE'S ABDICATION OF THE RESPONSIBILITY
TO PROTECT AND FULFILL

AND

IN THE MATTER OF THE KOFI ANNAN RESPONSIBILITY TO PROTECT CITIZENS AND
INTERNATIONAL LAW

AND

PRINCIPLES OF SANCTITY OF LIFE AND PRESERVATION OF HUMAN LIFE

AND

IN THE MATTER OF ARTICLES 2(5) & (6), 3(1), 10(2b) &(c), 19, 20 (1), 21(1), (2),
(3), (4) 22(1), (2), 23(1), (3), 24(1), (3), 25 (a), 26, 28, 29, 30, 35 AND 41 OF THE
CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE ALLEGED DENIAL, INFRINGEMENT OF AND THREAT
TO RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 10, 26(1), 28, 29(c),
(d) (e) AND (j), 30, 35 and 41 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 7, 8, 9, 10, 11, 16, 17, 20, 21, 24, 25, 28, 32, 39, 47
AND 62 OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

AND

IN THE MATTER OF ARTICLES 3, 4, 5, 6, 15 AND 17 OF THE AFRICAN CHARTER ON
HUMAN AND PEOPLE'S RIGHTS

AND

IN THE MATTER OF ARTICLES 1, 2, 3, 4, 5, 23 AND 24 OF THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS

AND

IN THE MATTER OF ARTICLE 7 OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

AND

IN THE MATTER OF ARTICLES 6 AND 7 OF THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS

AND

IN THE MATTER OF ARTICLES 1, 3, 4, 9, 13 AND 14 OF THE CONVENTION AGAINST
TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

AND

IN THE MATTER OF ARTICLES 1, 2 AND 5 OF THE CONVENTION ON THE
ELIMINATION OF RACIAL DISCRIMINATION

AND

IN THE MATTER OF ARTICLES 3, 6 AND 9 OF THE PROTOCOL TO PREVENT,
SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND
CHILDREN

AND

IN THE MATTER OF THE JUST ASSESSMENT OF QUANTUM OF DAMAGES TO
VICTIMS AND SURVIVORS OF VICTIMS AND FACTORS TO BE TAKEN INTO ACCOUNT
HAVING REGARD TO INTERNATIONAL LAW AND MUNICIPAL LAW

BETWEEN

LEGAL ADVICE CENTRE T/A KITUO CHA SHERIA.....1ST PETITIONER
HAKI JAMII RIGHTS CENTRE.....2ND PETITIONER
JOHN NG'ANG'A MUIGAI.....3RD PETITIONER
FEITH MURUNGA SHIMILA.....4TH PETITIONER
EUNICE WANGUI NJENGA.....5TH PETITIONER
CELESTINE MUSA VAKWA.....6TH PETITIONER
PAULINE MUTHONI KARIUKI.....7TH PETITIONER
MEDIATRICKS KHASANDI.....8TH PETITIONER
LUCY WAIRIMU NG'ANG'A.....9TH PETITIONER
HANNAH NJERI NGUGI.....10TH PETITIONER
BRENDA ANYANGO11TH PETITIONER
JANE WANJIKU KAGIMBI.....12TH PETITIONER
CATHERINE MUTURI.....13TH PETITIONER
PURITY MBOGO.....14TH PETITIONER

VERSUS

THE CABINET SECRETARY,
MINISTRY OF LABOUR AND SOCIAL PROTECTION.....1ST RESPONDENT
KENYA NATIONAL EMPLOYMENT AUTHORITY.....2ND RESPONDENT
THE CABINET SECRETARY,
MINISTRY OF FOREIGN AFFAIRS3RD RESPONDENT
DIRECTORATE OF IMMIGRATION
AND REGISTRATION OF PERSONS.....4TH RESPONDENT
THE NATIONAL INDUSTRIAL TRAINING AUTHORITY (NITA)5TH RESPONDENT

THE SPEAKER NATIONAL ASSEMBLY.....6TH RESPONDENT
THE SPEAKER SENATE7TH RESPONDENT
THE ATTORNEY GENERAL8TH RESPONDENT

AND

COMMISSION ON ADMINISTRATION OF JUSTICE1ST INTERESTED PARTY
THE ASSOCIATION OF SKILLED MIGRANT
AGENCIES IN KENYA.....2ND INTERESTED PARTY
KENYA ASSOCIATION OF PRIVATE
EMPLOYMENT AGENCIES.....3RD INTERESTED PARTY
KUDHEIHA WORKERS.....4TH INTERESTED PARTY

AND

ISLA & FIDA.....5TH AMICUS CURIAE

CORAM

Before Lady Justice Jemimah Keli

C/A Otieno

JUDGMENT

1. The Petitioners, alleging various violations related to labour migration to the Middle East, commenced this suit vide a Petition dated 25th February 2023 seeking the following relief against the respondents-
- a) A declaration that the Petitioners and victims of Middle East abuses were and are entitled to effective protection by the State against modern day slavery, human trafficking, violence,

physical injury, threats, deportation, rape, death and other human rights violations and the state failed/ neglected and has abdicated on this responsibility.

- b) A declaration that the Respondents failures and omissions of the state as particularized under Paragraph F (1-7) have violated the petitioners' legitimate expectation of state's accountability, rights to life and freedom from torture, right to and freedom from slavery and servitude, human dignity, right to information and right to fair labour practices as enshrined under Articles 10, 26(1), 28 and 29(c) (d) (e) (f), 30, 35 and 41 of the Constitution of Kenya 2010 and Articles 3,4,5,9,15 and 17 of the African Charter on Human and People's Rights and Articles 1, 2, 3, 4, 5, 23 and 24 of the Universal Declaration of Human Rights.
- c) An order for the IMMEDIATE cessation/ suspension of labour migration to the Middle East until the state demonstrates that the basic minimums as set out under Paragraph 121 of the Petition have been met.
- d) An order does issue for fresh vetting of all local employment recruitment agencies with immediate effect.
- e) An Order does issue, compelling the Respondents to evacuate and Repatriate any Migrant worker stuck and in distress in the Middle East abusive employment, deportation centers, and accommodation centers with immediate effect.
- f) An order compelling the 1st respondent to table a formal report on the cause of death of the late Lucy Wambui Ng'ang'a and all those who have died under unclear circumstances in the Middle East within three (3) months of the court's judgment.

- g) An order for the repatriation of the body for the late Lucy Wambui Ng'ang'a for a dignified burial at the state expense and a status report be provided within three (3) months of the court's judgment.
- h) An order directed at the Attorney General, the Ministry of Foreign Affairs and the Ministry of Labour to initiate the process of ratifying:
 - a) the Private Employment Agencies Convention, 1997;
 - b) ILO Domestic Workers Convention 2011 (No. 189);
 - c) the Employment Policy Convention, 1964;
 - d) the International Migration Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 in accordance with section 7 of the Treaty Making and Ratification Act and a status report be filed before this Honourable Court within 3 months of the court judgment.
- i) An Order does issue suspending the travel of Migrant Workers to the Middle East until Saudi Arabia ratifies C097 Migration for Employment Convention (Revised) 1949 and C143 Migrant Workers (Supplementary Provisions Convention 1975.
- j) An order for the cessation/ suspension of labour migration to the Middle East countries that lack consulate and embassy presence, lack labour offices and safe houses.
- k) An order directed at the state to ensure establishment of labour offices consulate and embassy presence and safe houses in all Middle East labour destination countries accessible to any

Kenyan in distress and a status report be presented to this Honourable Court within one (1) year of the court's judgment.

- l) An order directed at the state particularly the 1st Respondent to fast-track the review of the Bilateral Agreements in place to cover the identified gaps and emerging issues and specifically to renegotiate the terms in the agreements and a status report to be presented to this Honourable Court within six (6) months of the court Judgment.
- m) An order directed at the state particularly the 1st Respondent to fast-track the development and adoption of Bilateral Agreements with the Middle East countries where such agreements have not been developed and adopted and a status report be presented before the Honourable Court within six (6) months of the court judgment.
- n) An order directed at the state particularly the 1st Respondent to ensure full implementation of all the BLAs with all Middle East countries and a status report be presented before this Honourable Court within one (1) year of the court judgment.
- o) A declaration that the failure to enact the Labour Migration Management Bill and a comprehensive and harmonized labour migration policy that oversees labour exportation has increased the vulnerability of Kenyan migrant workers to abuse and human rights violations.
- p) An order that in view of the above foregoing, the judgment of this honorable court be transmitted to the offices of the Attorney General, the Clerk of the National Assembly and the

Clerk of the Senate for proposed law reforms for the purposes of enacting the Labour Migration Management Bill.

- q) An order that in view of the above foregoing, the judgment of this honorable court be transmitted to the offices of the Attorney General for the purposes of enacting a comprehensive and harmonized labour migration policy.
- r) An order directed at the state, particularly 1st Respondent, to present a status report of its efforts to increase public awareness and education and to address the gaps in the Curriculum of Homecare Management within six (6) months of the court's judgment.
- s) An order directed at the state particularly the 1st Respondent to establish programmes that assist in rehabilitation and reintegration of victims and returnees and a status report be presented before the Honourable Court within six (6) months of the court judgment.
- t) An order directed at the state to provide to the Honourable Court a status of all Kenyan migrant workers number and location of Kenyans abroad and conditions of employment abroad, those in prison facilities and deportation centers, their places of work, current and former migrant workers in distress and stuck and those who have died in the Middle East countries within three (3) months of the court's judgment.
- u) An order directing the 1st respondent to cater for travel expenses for the prospective migrant workers to avoid exploitation by their Middle East employers through the Kafala system.

- v) An Order does issue compelling the state to ensure that all identity and travel documents confiscated from the Petitioners are returned to the Petitioners and this to include issuing the 3rd Respondent with a death certificate and regularizing any official documentation due to the Petitioners.
- w) An order does issue for the state to meet any medical and psychosocial costs incurred by the Petitioners as a result of the death and abuses in the Middle East.
- x) An order for provision of support for the children of the Petitioners particularly the late Lucy Wambui Ng'ang'a until they attain the age of majority at the state's expense.
- y) A declaration that as a result of the breach of rights enumerated above, the petitioners suffered physical, mental and psychological trauma, loss, pain, special and general damages for which they are entitled to compensation.
- z) An Order does issue compelling the respondents jointly and severally to compensate the Petitioners as enshrined and provided for under Article 23(e) of the Constitution made up of special damages for the expenses incurred as well as general damages for pain and suffering, mental anguish, psychological trauma, loss of lives and exemplary damages pursuant to the declaration above for the petitioners.
- aa) This being a matter of public interest there be no orders as to costs.

2. The Petition was filed alongside the Supporting Affidavit of DR. Annette Mbogo sworn on 25th February 2023 where she annexed documents in support of the petition.
3. In response to the Petition the 1st Respondent filed a Replying Affidavit sworn by Dr. Alfred Mutua on 11th August 2025; the 3rd Respondent filed a Replying Affidavit of Roseline Kathure Njogu sworn on 22nd July 2025. The 4th Respondent filed a Replying Affidavit sworn by Ronnie Akedi dated 28th July 2025. The 5th Respondent filed a Replying Affidavit sworn by Gerald Kirimi on 24th September 2025. The 6th Respondent filed Grounds of Opposition dated 22nd July 2025. The 7th Respondent filed a Replying Affidavit sworn by Jeremiah Nyegenye on 4th November 2025. The 1st Interested Party filed a Replying Affidavit by Mercy K. Wambua on 6th December 2024; while the 4th Interested Party filed a Replying Affidavit sworn by Albert Njeru Obed sworn on 5th September 2025. A joint Amici Curiae brief dated 8th December 2025 was filed on behalf of the Amici Curiae.

The Petitioner's case in summary

4. The Petitioners' case is that this petition concerns alleged widespread human rights abuses and labour violations against Kenyan migrant workers, especially domestic workers, employed in Middle East countries including Saudi Arabia, Qatar, United Arab Emirates, Iraq, Kuwait, Jordan, Lebanon, Oman, and Bahrain.
5. The Petitioners state that Kenyan migrant workers have suffered severe abuse, including: physical, psychological, and sexual abuse; human trafficking; confiscation of passports and phones; withholding of salaries; contract substitution and unfair working conditions; food and sleep deprivation; rape and torture; forced labour, slavery, and servitude; unlawful

imprisonment; and deaths under suspicious circumstances including forced suicide and murder. These violations and abuses are aired and documented in reports by international and Kenyan media and involve Middle Eastern countries including Bahrain; Bangladesh; Iraq; Jordan; Kuwait; Lebanon; Oman; Qatar; Saudi Arabia; and United Arab Emirates among others; who have received individual narrations by the Petitioners, victims and families of victims of violation of human and labour rights in the Middle East.

6. Labour Migration to the Middle East, according to the Petitioners is driven by unemployment in Kenya, with approximately 30,000 Kenyans reportedly migrating to the region annually for work. A parliamentary report found about 55,000 Kenyans were working in Saudi Arabia in 2019, increasing to 97,000 by 2022 as reported to the local media by then Labor and Social Protection Cabinet Secretary Simon Kiprono Chelugui. Workers are mainly recruited and shipped to their work stations through local and foreign private employment agencies operating in Kenya and the Middle East. It is the Petitioner's case that the private recruitment agencies deceive workers with promises of good jobs and salaries, and instead workers are placed in abusive environments, where they die, disappear, are imprisoned, deported, and/or abused. The Petitioners cite a report issued by the rights advocacy group Amnesty International in April of 2020, where they reported that migrant workers in the Middle East often complain of lack of payment, forced labor, physical abuse, rape and dangerous working conditions among other violation of Human Rights.
7. The Kenyan government is blamed by the Petitioners for the abuse and mistreatment that is visited on migrant Kenyan workers in Middle Easter Countries for the reason that it has failed to regulate rogue agencies and to protect workers adequately. The Petitioners state that due to

public outcry and complaints to the Respondents on the poor working conditions, harassment, mistreatment and even mysterious deaths and disappearance of Kenyan migrant workers in foreign countries, especially in the Middle East, the 1st Respondent in acknowledgment of the scope and severity of the abuse imposed a ban on recruitment of Kenyans to work in those regions from September 2014. In November 2014, the 1st Respondent went further and revoked all accreditations issued to private employment agencies. However, the ban was lifted in 2016, and since then there have been numerous cases of deaths and other incidences of abuse, with distressed families calling on the government for assistance.

8. The Petitioners disclose that on 25th May 2017, Honourable Phylis Kandie, the then Cabinet Secretary, Ministry of East African Affairs, Commerce and Tourism, signed Bilateral Agreements (hereinafter BLA) between the Republic of Kenya and the Kingdom of Saudi Arabia, Qatar and United Arab Emirates. The BLAs are however inadequate in that they do not offer adequate protection to migrant workers; lack enforcement mechanisms; and fail to guarantee rights such as minimum wage, rest hours, or protection from passport confiscation.
9. Some notable cases of Kenyan migrant workers suffering abuse include:
 - a) On 22nd July 2021, Kenyan Ministry of Labour officials while appearing before Parliament to explain the circumstances surrounding the death of one Melvin Kang'ere who died in a Saudi Arabian prison where she was detained for allegedly threatening to kill her employer, revealed that Kenya recorded 93 deaths and 1,908 distress calls between 2019-2021 from Kenyans working in the Middle East, which report had prompted fresh calls for a travel ban at the time.
 - b) Kenyan authorities estimate that since November 2021 at least 23 more domestic workers have died while working in the Middle East and most of those deaths occurred in Saudi Arabia, according to labor officials.

- c) In October 2022, the plight of Kenyan migrant workers in the Middle East was a trending topic following the cases of the late Miriam Hannah Njeri, Diana Chepkemai who have since been rescued, Tabitha Wamoro, and Elizabeth Wanjiru, among others are who are still stuck in Saudi Arabia.
- d) The late Lucy Wambui Ng'ang'a represented in this Petition by her father, the 3rd Petitioner is one of the victims who left Kenya for Saudi Arabia to secure employment as a domestic worker only to turn up dead under unclear and suspicious circumstances. While some bodies have been repatriated for burial, that of Lucy Wambui Ng'ang'a has never been repatriated. Lucy's story is that in August 2019, unknown to her family, the Late Lucy Wambui Ng'ang'a was recruited for a job as a domestic worker for an employer in Saudi Arabia and then Qadisaya in Baghdad City, Iraq. Lucy was deported after only 3 days of arrival in Saudi Arabia and then rerouted to Iraq. About four months after departing from Kenya, Lucy Wambui Ng'ang'a communicated with her brother on 20th December 2019 indicating that she was in Iraq and she was okay and would be traveling home in December 2020. On 28th December 2019, Lucy Wambui Ng'ang'a's brother Harun Muigai received a phone call from a stranger that they later came to identify as Ndegwa informing him that their kin Lucy Wambui Ng'ang'a had died under mysterious circumstances in Baghdad City; Iraq. Subsequently the news on Lucy Wambui Ng'ang'a's death spread all over social Media. The 3rd Petitioner and his family visited the 8th Respondent for inquiries but was dismissed without any help. They made several similar trips to the 1st to 4th Respondents, and eventually the 3rd Respondent confirmed that Lucy died on 22nd December 2020 (barely 2 days after she had assured her brother she was okay) but the cause of death was unclear. Despite the 3rd Respondent's promises to facilitate the speedy return of Lucy Wambui Ng'ang'a's remains for burial, 2 years down the line, the body of the late Lucy Wambui Ng'ang'a is yet to be repatriated in spite of efforts by

her family to do so including by fundraising for flight tickets. The Late Lucy Wambui Ng'ang'a was a mother of 3 school going children. Her eldest son has since her death dropped out of school as his grandparents are unable to afford his school fees while they struggle to educate the other children. This is the plight faced by many families who have lost their loved ones in the Middle East most of whom were the sole breadwinners. It took over 6 months and a Petition to Parliament for the family of the late Lucy Wambui Ng'ang'a to obtain Lucy's employment contract from the employment agent and the 1st and 2nd Respondents who had declined to share the contract alleging that contracts entered into before November 2019 were not digitized.

10. The Petitioners contend that the Respondents knowingly allowed Lucy Wambui Ng'ang'a and other petitioners to be trafficked to the Middle East without informing them of the risks that abound in the Middle East, in particular, that Kenya had/ has no Embassy in Iraq through which migrant workers could seek help. The 4th to 14th Petitioners are returnees whose heart-rending stories as particularized in their affidavits expose the government's failures and neglect.
11. It is averred that the returnees and families of victims are not airing their grievances for the first time within the Petition before the court. They have given horror revelations through various media houses and social platforms on how most Kenyans migrating to the Middle East are subjected to slavery, servitude, sexual abuse, torture, denial of medical attention, long working hours, restriction on movement and communication, inadequate food and accommodation, poor working conditions acute violation of terms of employment and physical assaults some of which have led to death without any recourse. Stranded victims of abuse and families of victims say that the Kenyan Embassy in Saudi Arabia and other Middle East

countries have done little to help them. Worse, upon their return home, such victims of abuse face no job security or savings and suffer many "psychological scars" since there are too few mental and physical support health services in Kenya to remedy this situation. The lack of social care has also consequently contributed to an increase in human trafficking from Kenya back to the Middle East, despite efforts to return home following abuse initially.

12. The Petitioners highlight the “Kafala sponsorship system” as a major source of abuse of migrant workers. They explain that under the said system, a Kenyan migrant is required to be sponsored by a citizen of the country where they intend to work, with the citizen covering the agency recruitment fee, visa fee, air ticket and other incidentals. This sponsorship is the only way for migrant workers to obtain an entry visa and residence permit. To ensure that a migrant worker does not leave before payment of the costs involved in the sponsorship, employers confiscate the worker's passport and identification card, and tie them to fixed-term contracts, which gives the employer almost absolute control over the migrant worker. Kenyan migrant workers are reluctant and afraid to seek help whenever they are abused because their 'residential status is tied to their employment, as seeking help may leave them unemployed which would then trigger a deportation process because employment is the anchor for residential status. Repatriation of migrant workers involves the issuance of exit visas which are only issued upon the authority of the employer and the employment agencies. Even when severely abused, the worker is unable to flee the country or seek to be repatriated because they do not have the necessary documents to leave the country. The kafala system does not create a pathway to citizenship or permanent residency for the workers; and since it depends on cheap imported labor, employment is very unstable for the workers and they can be easily expelled out of the country when their services are not needed.

13. The Petitioners decry the Kafala system because: workers' legal status depends on employers; employers confiscate passports; workers cannot easily leave abusive jobs; exit visas depend on employer approval; and workers risk detention or deportation if they escape. According to the Petitioners, this system is a modern form of slavery.
14. The Petitioners raise human trafficking concerns in relation to employment of Kenyan migrant workers in the Middle East and aver that there exist organized trafficking networks involving: brokers and recruitment agents; fast-tracked passports and visas; workers receiving contracts only at airports; contract terms differing from promises made during recruitment; workers becoming undocumented after short-term visas expire; and lack of protection and support. They describe a system where recruiters (agents/brokers) are paid a commission of USD 1,000 for each person recruited. The costs of the visa, flight and, in some cases, medical examinations are covered by the foreign recruiter. Although applying for a passport in Kenya is a lengthy process, human trafficking cartels are able to bypass Kenya's immigration controls and speed up the process and a new passport is issued within three days. Once the job seeker presents his/ her passport to the recruiter the work visa is issued within a day. Within a week the worker is in the destination country, but without an employment contract. In some cases, the worker is issued with an employment contract at the airport, a well-orchestrated effort to make sure that they do not appreciate the terms of employment or make informed decisions on the employment. Migrants, therefore, do not see nor consent to the terms of the employment contract or execute the contract prior to its attestation by the ministry of labour and are only issued with the contracts at the airport which have mostly turned out to contain terms not initially negotiated between the parties. The changes include salary reductions, new job locations and increased working and shift hours, a fact that is confirmed by the 4th to 14th

Petitioners. On arrival the job seeker's passport is confiscated by the employer/sponsor, in line with the kafala system.

15. The Petitioners state further that many of the trafficked migrant workers leave the country without being documented by the receiving country's government; having no choice, they become submissive and vulnerable, accepting any work they are offered. Without their passports, they neither have the means nor the technical know-how to return home. Many of them are arrested and end up in jail for being in the country illegally with no documentation. Others work in illegal jobs such as sex work. For those lucky to have their documentation they note that the 3rd Respondent knowingly issues them with a 90 days' visit visa despite their contract of employment being for an average period of 2 years. When the 90 days' visa expires migrants automatically become illegal immigrants.
16. The Petitioners fault the 1st Respondent for approving and attesting foreign contracts without the consent of the Petitioners or migrant workers who are not allowed to access or consent to the terms prior to attestation contrary to the provisions of Section 84 of the Employment Act. They also fault the 4th Respondent for failing to inform the migrant workers that after their 90 day visit visas expire, they will become illegal migrants, and be exposed to detention in Middle Eastern prisons. Further, they state that the Kenyan Government fails to: provide sufficient worker education and awareness; establish effective labour migration laws; ratify key international labour conventions; create safe houses, labour offices, and consular support; investigate deaths properly; assist distressed workers abroad; and rehabilitate returning victims. It also claims the government lacks accurate data on Kenyan migrant workers abroad.

17. The Petitioners acknowledge that Kenya developed and launched a Curriculum on Homecare Management in 2018 with special focus on pre-departure training, but state that the training faces major limitations including: the course is offered in a crush program ineffective to complete the programme; insufficient legal/ policy framework to support the programme; most of the training centers are owned by either influential or private employment agencies thus creating a conflict of interest and undue interference in their management; and gaps in the curriculum in that pre-departure training does not encompass basic Arabic language, culture of the labour destination countries and their rights while abroad. The Petitioners contend that the limitations of the curriculum on Homecare Management mean that the state has failed to provide migrants with adequate information and education/training relating to the immigration and foreign employment, their rights under the Convention; conditions of their admission and employment; and their rights and obligations under laws, practice, culture and language of the Middle East countries thus exposing the petitioners to the broker markets and false information.
18. On the issue of inadequate labour laws for Kenyan migrant workers in the Middle East, the Petitioners state that there are no protective laws and policies within the country and in the labour destination countries, formal agreements and MOUs. They state that as of 2010, 99% of domestic workers were excluded from the scope of the Middle Eastern countries' labor laws and even where laws do protect workers, they are often poorly enforced. Kenyan migrant workers are further exposed to vulnerabilities as no host country in the middle east has ratified the ILO' s C 189 - Domestic Workers Convention, 2011 (No. 189). The Saudi Arabian Government has also not ratified C097 Migration for Employment Convention (Revised) 1949 and C143 Migrant Workers (Supplementary Provisions Convention) 1975 which are vital in

the protection of Kenyan Migrant workers in Saudi Arabia. Kenya has only signed three BLAs (with Saudi Arabia, Qatar and United Arab Emirates) and even the BLAs that exist have been found to be inadequate to offer protection since: they do not disclose any rights of the migrant workers against their foreign employers or mechanisms for the complaint, investigation and prosecution of perpetrators of human rights abuse; they do not address issues of payment of minimum wage; provision for rest hours, non-confiscation of travel documents, compliance to site of employment, provision for sick leave among other gaps; they do not establish any Joint Technical Committee to address the issues; and the state has failed to ensure their full implementation.

19. In addition to the foregoing, Kenya lacks a comprehensive and harmonized labour migration policy that oversees labour exportation. The fact that there are different state agencies, among them the Ministries of Labour, Foreign Affairs and the Interior, responsible for implementing different laws has led to a lack of coordination. A well-coordinated response to labour migration issues will limit the blame games between state agencies and state institutions currently experienced and enhance protection of migrant workers. The Kenyan Labour Migration Management Bill, which is currently in Parliament, is hailed by the Petitioners as being expected to fill major identified gaps in labour migration and to enforce the existing legislation is yet to be enacted. It will further consolidate all labour migration issues, incorporating emerging issues and curing existing loopholes which is key in protection of Kenyan migrant workers. However, the same is yet to be passed.
20. Another gap in protective labour laws for Kenyan migrant workers identified by the Petitioners is that Kenya is yet to ratify international instruments such as the Private Employment

Agencies Convention, 1997; ILO Domestic Workers Convention 2011 (No. 189); the Employment Policy Convention, 1964; and the International Migration Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. The failure to ratify these instruments, enact a foreign employment policy and the Labour Migration Management Bill and failure to review the existing BLAs and formulate BLAs with the countries with no BLAs has led to the lack of protection of Kenyan migrant workers. The lack of a comprehensive legal framework to protect Kenyan migrant workers has resulted in the lack of an informed strategy and a well-coordinated process to regulate citizens' recruitment, departure, transit, remuneration, conditions of employment, dispute resolution, stay in foreign countries and return to Kenya.

21. The Petitioners highlight that Kenyan migrant workers are nursing complex health issues, permanent psychological trauma, mental illness and stigma arising from among others rape, sexual and physical abuse yet there are no recovery programmes/ initiatives and centres. Some of them were denied salaries, paid salaries not commensurate to their agreement, some of them unceremoniously deported and or their hard-earned monies that they sent to family members in the country misused. Upon their return they are treated as outcasts and hence rehabilitation and reintegration remain an important aspect in their social wellbeing. They fault the state for failing to take any steps to reintegrate and or address their plight, and insist that the state has abdicated its responsibilities.
22. It is averred that the Petitioners and other Kenyan migrant workers have been subjected to a lack of government assistance, lack of consular assistance, lack of labour offices and safe houses. They state that the Kenyan government has failed to offer assistance or support to

migrant Kenyan workers abused in the Middle East in evacuation and repatriation, or to offer any form of compensation to victims and families of migrant workers abused in the middle east. Even in the cases of mysterious deaths, the state has failed to offer any form of assistance in the investigations of the said deaths leaving many families with no closure of their kin's death and without giving them a dignified burial. The state also allowed and continues to allow workers to go and work in countries in the Middle East with no embassy and or consulate presence. Noting the perilous work environment in the Middle East, the state should have ensured that there were representatives in the Middle East countries to answer their calls of distress such as consuls and labour attaches. In the areas where they are present they are inadequate.

23. . It is averred that even where there is an Embassy or Consulate, migrant workers lack requisite formal consular assistance; particularly the Kenyan Embassy at Riyadh, Saudi Arabia shut the doors to them forcing them to be detained at deportation centers and agency accommodation facilities where life was demeaning for a human being. The Petitioners' grievance is that their distress calls to the embassy, employment agencies and government agencies for rescue were ignored. The Petitioners state that as a result of lack of assistance most of the migrant workers are held in prisons and detention centers, deported back to the country or are forced to work in the perilous work environment thus forced labour. The Petitioners case is that migrant workers in distress lack a mechanism to present their complaints and or communicate in case of distress; and there are no safe houses for distressed Kenyans who run away from their employers. If at all the safe houses are present, the same are inadequate and inaccessible to offer support to migrant workers in distress.

24. The Petitioners aver that there is a lack of accountability from government in that it lacks current status and statistics of migrant workers in the Middle East countries, in terms of their number and location, conditions of employment, number of those in prison facilities and deportation centers, their places of work, and the details of current and former migrant workers in distress and stuck in the Middle East countries, and those who have died. The lack of this data impedes the ability of the state to make informed decisions on migrant workers' welfare, conditions of living and any logistical arrangements for those in distress. It has further limited the state's ability to formulate interventions leaving many Kenyans to continue to suffer in Middle Eastern countries.
25. On the issue of failure to register and regulate the operations of employment agencies, the Petitioners aver that the Respondents have failed to regulate or rein in rogue, corrupt, criminal and unregistered agencies as a result of which many Kenyans have fallen prey as victims. As supported by reports such as a report titled "The New Slavery-Kenyan Workers in the Middle East", the foreign immigration sector and markets are driven by well-connected security, business and political elites with links to the continental trafficking economy. The cited report identifies corrupt practices in the relevant government departments as an enabling factor that sustains the trafficking along the criminal value chains.
26. The petition concludes that the Kenyan government failed in its duty to protect migrant workers from exploitation, abuse, trafficking, and death. Due to state failure to protect them they have been exposed to a perilous work environment which has contributed to the violation of their human rights, and various laws and regulations, including:

- a) Their Article 25 right to and freedom from slavery and servitude by: allowing or being complacent as young unsuspecting Kenyan girls are sent to the middle East where they are trapped to servitude under the Kafala system (without adequate protection from the state) which promotes abuse and exploitation through unpaid labour, forced labour, physical abuse, rape, and dangerous working conditions and binds Kenyan migrant workers to a two-year contract where even in instances of abuse and exploitation the migrant worker cannot flee as they have to pay the hefty costs of sponsorship; failing to ensure that there is a proper and adequate legal and policy framework to protect migrant workers before they travel to the Middle East; failure of embassies and consulates (who should play an active role in protecting their rights abroad ignore their distress calls for evacuation and repatriation) to provide assistance thus exposing them to deportation, forced labour and detention in prison facilities. The Petitioners state that the state has failed to protect them from being trafficked and or has been complicit in their trafficking by: failing to regulate/rein in rogue, corrupt, criminal and unregistered agencies as a result of which many Kenyans have fallen prey as victims; allowing the foreign immigration sector and markets to be driven by well-connected security, business and political elites with links to the continental trafficking economy; failing to ensure that there is a proper and comprehensive legal and policy framework to protect migrant workers before they travel to the Middle East and during their residency in the Middle East; the 1st Respondent approving and attesting to foreign contracts without the consent of the petitioners or migrant workers contrary to the provisions of section 84 of the Employment Act; allowing innocent and uninformed Kenyans to be lured, enticed and deceived of great employment opportunities by rogue employment agencies operating locally and outside when this is not the case by failing to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons; and failing to provide education and

information on the potential risks of working as migrant workers in the middle East to enable them to assess the risk and hopefully reconsider their decision to migrate.

- b) Their right to information under Article 35 of the Constitution and Articles 28 and 33 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families by failing: to inform the citizenry of the potential risks of working in the Middle East; failing to inform them of the potential risk to their liberty and being illegal migrants when they are issued with a ninety (90) day visa, knowing too well at the point of attestation that the migrant workers have two (2) years contract; failing to provide information on the whereabouts of the migrant workers particularly those who have died, the cause of their mysterious deaths and or information that would aid into their repatriation and evacuation; failing to put in place a curriculum that will provide them with information and knowledge to avoid exposure to broker markets and vulnerabilities namely knowledge on immigration and labour laws, their rights under the Convention, conditions of their admission and employment, and their rights and obligations under the laws, practice, culture and language of Middle Eastern countries.
- c) Their fundamental right to life and freedom from torture under Article 25, 26, 29 and 30 of the of the Constitution, Articles 10 & 16 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Articles 6&7 of ICCPR, Articles 4 and 5 of ACHPR and Articles 1 and 3 of UDHR by: exposing them to extreme physical abuse, torture and sexual abuse; exposing them to unwarranted death particularly for the daughter of the 3rd Petitioner; exposing them to violations particularized in the individual Petitioner's affidavits; failing to evacuate and repatriate the Petitioners and

victims of the Middle Eastern abuses; allowing the migrant worker's families particularly the 3rd Petitioner to be exposed to the torture of not knowing the cause of the death of their kin and not burying them; exposing migrant workers to vulnerabilities and perilous working environment; knowing there is no proper and adequate legal and policy framework to protect them in the Middle East; failure of embassies and consulates (who should play an active role in protecting their rights abroad ignore their distress calls for evacuation and repatriation) to provide assistance thus exposing them to deportation and forced labour; failing to put in place programmes for rehabilitation and reintegration of victims upon their return; failing to provide any form of assistance (through investigations of mysterious death, evacuation, answering to distress calls and repatriation) to families thus perpetuating the culture of abuse and human rights violations; and lacking any form of accountability.

- d) Their Article 28 right to live in dignity by: exposing them to the indignity of modern day slavery without adequate protection from the state; exposing them to the indignity of living as a trafficked person; failing to provide any form of support towards reintegration and rehabilitation upon return, leaving them as a laughing stock to other members of the community noting that their travel was on the promise of a better life; failing to evacuate and repatriate the Petitioners and victims of the Middle East abuses forcing them to live in the indignity of abusive employment and in deportation and accommodation centers in the Middle East; the returnees continue to face the same challenges that pushed them to go out of the country upon return; and allowing the Petitioners to live the indignity of not knowing the cause of the death of their kin and not burying their kin noting the particular attachment families have on their deceased family members.

- e) Their Article 41 right to fair labour practices by: subjecting the Petitioners and victims of Middle East abuses to unfair labour practices; unfair remuneration for work done; and to unreasonable working conditions in that the state has allowed them to be subjected to modern slavery without adequate protection from it; allowing and being complicit as vulnerable Kenyans are subjected to human trafficking; failing to provide education and information on labour migration to the Middle East; failing to evacuate and repatriate the Petitioners and victims of the Middle East abuses forcing them thus exposing them to an abusive employment, deportation and accommodation centers in the Middle East; failing to ensure that there is a proper and adequate legal and policy framework to protect migrant workers before they travel to the Middle East; exposing migrant workers to vulnerabilities and perilous working environment knowing there is no proper and adequate legal and policy framework to protect them in the Middle East; failing to regulate/rein in rogue, corrupt, criminal and unregistered agencies which expose the migrant workers to unfair remuneration and unreasonable working conditions; knowing and being complicit as Kenyans are issued with 90 day ' visa despite being issued with two (2) years employment contract thus exposing them deportation and being illegal migrants; allowing, being complicit and failing to provide support, consular and embassy support for Kenyans in distress and those who need to be repatriated and evacuated; approving and attesting foreign contracts without the consent of the petitioners or migrant workers contrary to the provisions of section 84 of the Employment Act and exposing the migrant works to change of terms of contract including unfair remuneration.
- f) The national principle and value of accountability and the Petitioner's expectation thereof by: lacking or having inadequate current status and statistics of migrant workers in Middle Eastern countries which has impeded the state's ability to make informed decisions on

migrant workers and to formulate interventions; failing to account for the lives and abuses of Kenyan migrant workers taking place in the Middle East by failing to inquire into the circumstances of mysterious deaths and abuses; failing to provide any support to migrant workers particularly at the time of distress and upon return; and failing to regulate/rein in rogue, corrupt, criminal and unregistered agencies which expose the migrant workers to unfair remuneration and unreasonable working conditions.

- g) Sections 83, 84, 85, and 86 of the Employment Act which provide for verification of consent of the employee to the terms of a foreign contract of service prior to attestation of the same.
- h) Regulation 8 of the Labour Institutions (Private Employment Agencies) Regulations, 2016 which provides that a foreign contract of employment shall specify the party responsible for the payment of the- (a) visa fee; (b) airfare; and (c) medical examination: Provided that reasonable administrative costs may be charged by the agent in respect of trade test, occupational test and the administrative fees shall not exceed the job seeker's proposed one month's salary.
- i) Section 8 of the National Employment Authority Act, 2016 which provides that the Authority shall conduct periodic surveys on labour market skills requirements and advice training institutions and job seekers 'appropriately to ensure that training and skills match the job market requirements; facilitate, continuous training and other activities of Kenyans to increase their chances of employment and work skills; and facilitate the employment and placement of job seekers in formal and informal or any other form of employment, locally and internationally.

- j) The Kenyan Citizenship and Immigration Act, 2011 which provides for a Kenya Citizens and Foreign Nationals Management Service.
- k) Sections 5 of the Foreign Service Act, 2021 which provides that the foreign service shall conduct and coordinate the international relations and cooperation of the Republic at bilateral, regional and multilateral levels; serve and promote the legitimate interests of Kenyans living abroad; provide consular services as prescribed; and coordinate relevant agencies in emergency evacuation of distressed Kenyans abroad. Also Section 46 which provides that the National Treasury shall, subject to the approval of the National Assembly, allocate funds from the Consolidated Fund or reimburse the Ministry for any expenses incurred in conducting the emergency evacuation of Kenyans abroad where the evacuation has been approved by the Cabinet.
- l) The Kenya Foreign Policy, 2014: The Diaspora Diplomacy Pillar which recognizes the huge and untapped potential of Kenyans abroad which can contribute to the country's national development agenda. The objectives of this pillar are to: provide effective and responsive consular services; facilitate Kenyans Abroad to participate in national development; promote the access by Kenyans to the international labour market; utilize outstanding Kenyans, and tap into the skills and resources of the Kenyans Abroad for national development.
- m) Section 7 of the Treaty Making and Ratification Act, 2012 which provides that where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty.

- n) Articles 7, 9, 10, 11, 16, 17, 19, 21, 25, 28, 33 and 62 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which provide for various measures to protect migrant workers and their families from exploitation.
- o) Articles 1, 2, 3, 4, 5, 23 and 24 of the Universal Declaration of Human Rights which provide for the rights that all human beings should enjoy.
- p) Articles 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which obligates State Parties to recognize the right of everyone to the enjoyment of just and favorable conditions of work.
- q) Articles 4, 5, 6, 9, 15 and 17 of the African Charter on Human and Peoples' Rights.
- r) Articles 6 and 7 of the International Covenant on Civil and Political Rights.
- s) Articles 5, 6, 7, 9 and 15 of the Private Employment Agencies Convention, 1997 (NO. 181); and
- t) Articles 3, 6 and 9 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention against Transnational Organized Crime

27. The Petitioners assert that in view of the cases of abuse and exploitation, the UN Special Rapporteur and Human Rights bodies have recommended its abolishment. Several reports

including the reports by Senate and the Commission on Administrative Justice have highlighted other major systemic, legislative, policy and institutional gaps in Middle East labour migration such that it cannot be said that it is safe for Kenyan citizenry.

28. The Petitioners seek an immediate cessation/suspension of labour migration until the state demonstrates that the following basic minimums/remedies formulated by them have been met, namely:

- a) The ascertainment of the status of all Kenyans in deportation and prison facilities in the Middle East with the aim of repatriating them back to the country;
- b) The ascertainment of the current status of all Kenyans working in the Middle East, their contacts and place of work and establishment of lines of communication between them and the Labour offices at the embassies;
- c) The rescue and return to Kenya of all current and former migrant workers who are currently in distress and stuck in the Middle East;
- d) The investigation and submission to this Honourable Court of reports on Kenyan migrant workers (including the 3rd Petitioner's daughter) whose deaths have occurred in the Middle East, demonstrating the linkage between the deaths and the state's handling of distress calls and other complaints;
- e) The establishment of labour offices and safe houses in all Middle East labour destination countries accessible to any Kenyan in distress;
- f) Fresh vetting of all local employment recruitment agencies.

29. It is averred that the above basic minimums have further been recommended in the 2021 Senate Standing Committee on Labour and Social Welfare Report on the Labour Migration, Senate Study visit to the Middle East and Policy Implications.
30. The Petitioners point out that countries such as India, the Philippines and Pakistan, which have more migrant workers in the Middle East than Kenya, do not experience as many human rights abuses as Kenya and their migrant workers enjoy more favourable working conditions and fair remuneration. They take the view that the untold suffering faced by Kenyan migrant workers and the human rights violations that they face in the Middle East have eroded any comparative advantages that the state may seek to advance in support of the labour migration.
31. It is averred that the state has a responsibility to prevent and combat human rights abuses and deaths and to protect Kenyan citizens from human rights abuses and deaths, which duty it has abdicated through its failures, reckless and negligent acts.

Respondent's case in brief

1st Respondent

32. It is the 1st Respondent's case that the Directorate of Labour Migration Management is specifically tasked with coordinating labour migration management and addressing issues of migrant workers protection, including prevention of trafficking. To achieve its mandate, the Directorate works closely with the International Organization for Migration (IOM) and the International Labour Organization (ILO) to implement international standards and projects to combat human trafficking, promote safe and orderly migration, and protect the rights of migrant workers.

33. The 1st Respondent states that it has developed an institutional framework that includes ethical recruitment practices, vetting of employment agencies, bilateral labour agreements with destination countries, and enforcement of applicable international labour standards.
34. On the claim that the Respondents have failed to carry out public awareness/education drives, the 1st Respondent avers that the Directorate of Labour Migration Management, in collaboration with NITA and NEA, delivers Pre-Departure Training (PDT) programmes and education to migrant workers to build awareness of rights, responsibilities, destination conditions, and how to access assistance abroad. Further, in an effort to promote public awareness on labour migration to Middle Eastern countries, the Ministry has carried out public campaigns and disseminated educational content in both urban and rural areas through community forums, digital platforms, radio, and county networks to ensure wider awareness on the dangers of irregular migration and human trafficking.
35. In addition to the above, it is stated that the Directorate of Labour Migration promotes international labour standards and safeguards migrant workers through legislative reform, bilateral labour agreements, inspection protocols, and complaint resolution systems. The Directorate continues to develop and implement frameworks that align with ILO conventions, and is actively involved in coordinating decent work programmes, social dialogue, and in monitoring migration trends to inform national policy.
36. The 1st Respondent admits that the Directorate of Labour Migration is responsible for vetting, licensing, and monitoring employment agencies. The Ministry maintains a publicly accessible and regularly updated list of licensed agencies, and routinely takes action to deregister agencies

found operating unethically or without authorization. It is stated that enhanced inspections, stakeholder sensitization, and inter-agency collaboration have been instituted to curb exploitation by rogue recruiters and to enforce adherence to ethical standards.

37. Some other measures that the 1st Respondent has taken are: setting up a dedicated Migrant Workers' Complaints Desk within the Directorate to receive and resolve complaints, with new initiatives to digitize the complaints and redress platform being in development; and initiating reintegration programmes for returnee migrant workers, which focus on counselling, job placement, entrepreneurship training, and reinsertion into the domestic labour market.
38. The 1st Respondent affirms its willingness to provide periodic reports to the Court as may be directed, outlining progress and compliance with orders issued. It asserts that regulations mandating ethical recruitment standards are already in force and are currently being reviewed to enhance enforcement, including by imposing stiffer penalties for violations.
39. In conclusion, the 1st Respondent categorically denies any breach of constitutional and statutory provisions as pleaded by the Petitioners, and affirms its commitment to safeguarding the rights and dignity of Kenyan migrant workers in accordance with Articles 10, 21, 41, 43, and 47 of the Constitution. It points out that the Petitioners have not specified and demonstrated any deliberate inaction or constitutional violations by the State Department for Labour or its Directorate.

3rd Respondent

40. It is the 3rd Respondent's case that the State Department for Diaspora Affairs was established in 2022 through Executive Order No. 1 of 2023 tasked with matters affecting the Kenyan diaspora, including migrant workers. It was established in furtherance of the Government's continued commitment to improve the welfare of Kenyans abroad, one of its core mandates being, championing the protection of the rights and welfare of the diaspora, including Kenyan migrant workers, and to ensure the State provides structured, timely, and coordinated support to all Kenyans living and working abroad.
41. The 3rd Respondent denies the Petitioners' claims that the Kenyan Government has failed to support Kenyan migrant workers in the Middle East, instead averring that the State Department for Diaspora Affairs, together with Kenya's diplomatic missions and other government agencies, has consistently supported the welfare of Kenyans in distress abroad through evacuation, consular support, documentation assistance, and policy formulation.
42. To illustrate, the 3rd Respondent states that the Government has intervened in multiple cases involving Kenyan migrant workers in distress, including in cases of abuse and death, by liaising with foreign missions, foreign governments, recruitment agencies, and affected families.
43. The 3rd Respondent admits that Kenya does not have embassies in every country, but states that diplomatic coverage in those countries is provided through accredited embassies from neighbouring or regional missions. For instance, Kenya's Embassy in Riyadh covers Iraq and is mandated to provide consular support to Kenyans in that region. They deny the claim by the Petitioners that the Kenyan Embassy in Riyadh is unresponsive and confirm that it has handled

numerous distress calls, provided temporary shelter through partnerships, issued emergency travel documents, and engaged in rescue operations in collaboration with host country authorities.

44. On the issue of safe houses, it is the 3rd Respondent's case that the Government has collaborated with other partners including host governments and civil society organizations to provide temporary shelter for Kenyans in distress and continues to explore the establishment of Government-run safe houses in high-risk regions. The 3rd Respondent therefore renounces the allegation that there is no mechanism for distressed migrant workers to report or seek help. They state that multiple channels exist, including embassy hotlines, consular email addresses, direct visits to the embassies, and liaison with the Ministry through official contacts.
45. The 3rd Respondent affirms that the State Department, in collaboration with the Ministry of Labour and Social Protection, has initiated bilateral labour agreements with several Gulf countries aimed at protecting Kenyan migrant workers, setting-standards for recruitment, dispute resolution and repatriation protocols. On the issue of accountability as raised by the Petitioners, the 3rd Respondent explains that the State Department, through Kenya's missions abroad, maintains records of voluntarily registered Kenyan migrant workers. The registration process, while not mandatory, is encouraged and has enabled the provision of targeted assistance. It is vehement that the assertion that the Government lacks data on migrant workers and deaths is incorrect. In fact, on 10th July 2024, the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs appeared before the Senate and presented a detailed report on the number of Kenyans living in Gulf countries, the number of reported deaths, and

the government support structures in place, meaning that the Kenyan Government possesses the relevant data.

46. The Government has since has taken steps to enhance data collection and policy planning, by establishing a diaspora database and coordination with recruitment agencies, embassies, Directorate of Immigration Services and the National Employment Authority to gather relevant data.
47. On the allegations regarding the death of Lucy Wambui Ng'ang'a, it is averred that the Government, through the Ministry of Foreign Affairs at the time, actively engaged the Kenyan Mission in Riyadh to facilitate the repatriation of her remains and to provide consular support to her family. The matter occurred in 2020, prior to the establishment of the State Department for Diaspora Affairs, but the Ministry of Foreign Affairs maintained continuous communication with the Kenyan Embassy in Riyadh and with the deceased's family. The Embassy provided the family with a quotation from Baghdad International Bureau Funeral Office amounting to USD 7,000 required for the repatriation. Despite repeated communication, the family did not remit the required funds, and as a result, the repatriation process could not proceed. This matter was handled within the existing consular frameworks prior to the establishment of the State Department for Diaspora Affairs, and every available effort was made by the relevant authorities to assist the family of the deceased.

4th Respondent

48. The 4th Respondent clarifies that its mandate is limited to administration and facilitation of movement in and out of Kenya with no legal and/ or statutory duty to regulate labour issues

of Kenyans employed in the diaspora. It indicates that by dint of Article 12 (b) of the Constitution, it possesses a constitutional duty to issue all Kenyans with a passport as a matter of entitlement. To this extent, all Kenyans remain eligible to be issued with a passport to enable them to freely move across international borders subject to sovereign conditions set by the by the intended country of destination.

49. The 4th Respondents denies that there is a nexus between social care and human trafficking, and accuses the Petitioners of making general allegations in a mischievous attempt to sensationalize the matter without any legal basis.
50. On the allegation that passport processing for migrant workers is fast-tracked, the 4th Respondent avers that the passport system is an online process with a digitized queueing system which is hosted on e-citizen. They emphasize that the system gives no unfair advantage to any applicant in as far as processing a passport is concerned. Normally, as admitted by the former Principal Secretary for Immigration Services, Prof. Julius Bitok through a press release by the Star dated 18th May 2024, it takes an average 2 weeks to apply and obtain a Passport, the same which is bound to improve."
51. The 4th Respondent vehemently denies the averment that migrant workers leave the country undocumented, stating that it is inconceivable that any person may travel outside Kenya without a passport or a valid travel document, noting that the same is an offence under Section 54 (1) (K) of the Kenya Citizenship and Immigration Act, 2011. Further still, they point out that according to International Civil Aviation (ICAO) standards, voluntary international travel is only facilitated through a document issued by the competent authority of a state. The 4th

respondent denies involvement in the receipt, administration and utilization of any security bond collected from the agencies and foreign employers.

52. It states that it has to every extent possible made its services available to Kenyans in the diaspora, through Immigration Attaches in various embassies and/or consular offices around the world. These Immigration Attaches remain readily available to offer immigration services to Kenyans in the diaspora including those in distress. It confirms that by dint of Section 25 (e) of the Kenya Citizenship and Immigration Act, 2011, it has powers to issue an Emergency travel document, which is specifically issued to Kenyans who are stranded outside Kenya.
53. The 4th Respondent avers that the Petition does not present any violation and/or breach of right, and does not disclose any legal and justifiable claim against the 4th Respondents.

5th Respondent

54. It is the 5th Respondent's case that there exists a sufficient legal and policy framework to support the homecare management programme for migrant workers destined to the Kingdom of Saudi Arabia. The Homecare management program is regulated by the Industrial Training Act CAP 237 of the Laws of Kenya, whose purpose and scope is to regulate training of persons engaged in Industry.
55. It states that it is mandated by Section 3A of the Industrial Training Act to carry out industrial training; develop industrial training curricula; assess industrial training, test occupational skills and award certificates including Government trade test certificates; and accredit institutions engaged in skills training for industry. The regulation of the Homecare management

programme entails the aforesaid activities. The 5th Respondent is emphatic that there are no gaps in the homecare management curriculum, and states that it mistakenly refers to the homecare management curriculum developed in 2018, which is no longer in use, having been subjected to reviews and revised in 2023 to address emerging trends, challenges faced by migrant workers and feedback from stakeholders. The key stakeholders involved in the review were the same and in labour migration including returnee migrant workers, training institutions and recruitment agencies. The validation of the curriculum took place on 23rd March 2023, and thereafter the implementation of the curriculum commenced.

56. The 5th Respondent explains that the revision of the curriculum was designed to achieve various objectives including: help the migrant workers acquire specific skills that enhance their employability and productivity; inform migrant workers about their rights, obligations and protections; and facilitate the integration of migrant workers into their new communities by providing language skills and cultural orientation. This revision resulted in two curriculum namely homecare management curriculum and curriculum for pre-departure training for the Kingdom of Saudi Arabia. The Homecare Management curriculum covers various topics which include: Employment Contract, which covers employment documents, and importance and interpretation of an Employment Contract; Life Skills, which covers Self-Management, Effective Communication, Personal Financial Management, Employer-Employee Relationships, and Work Ethics and Values; and Household Chores, which covers kitchen operations, laundry work, Occupational Health and Safe Work Habits, Basic Childcare and Basic caregiving.

57. On its part, the Pre-departure curriculum has been designed to prepare the migrant workers to take up the available job opportunities in the Kingdom of Saudi Arabia and includes topics of training such as: Introduction to the Kingdom of Saudi Arabia covering the geographical location of Saudi Arabia, weather patterns, currency, telecommunication services, emergency service providers and common crimes and offences; Saudi Culture which covers norms and cultural expectations; Arabic Conversation which covers common words, greetings, self-introduction and simple conversation in Arabic; migrant workers' support systems, which covers the importance of consular services, role of the labour attaché and importance of diaspora associations, migrant workers support infrastructure at the country of destination, and dispute resolution mechanisms for domestic service workers; and Repatriation, return, and re-integration, which covers the return process, conditions for repatriation, re-integration and emerging trends.

58. It is the 5th Respondent's case that two curriculum which they describe provide the migrant workers with adequate information to assist them while working abroad.

6th Respondent

59. The 6th respondent challenges the petition on the premises that their presence is not necessary for the court to adjudicate on the dispute or to decide on whether the Petitioner's rights were violated; the Petition makes no allegation of any infringement or violation of human rights by the 6th Respondent and seeks no particular order against the 6th Respondent, meaning that it has therefore been improperly joined in these proceedings; and the petitioners have not pleaded the Petition with a degree of precision as against the 6th Respondent.

60. Further, it is the 6th Respondent's case that Article 94 of the Constitution limits legislative authority to Parliament. As such, to the extent that the Petition seeks to compel the Clerk of the National Assembly to initiate legal reforms on the Labour Migration and Management (No. 2) Bill (Senate Bills No. 42 of 2024), the Petition offends the doctrine of separation of powers. They aver that the Petition seeks judicial intervention on a Bill that is undergoing the legislative process, namely, the Labour Migration and Management (No. 2) Bill (Senate Bills No. 42 of 2024), hence offends the doctrine of ripeness.

The 7th Respondent

61. The 7th Respondent addresses the averment that the Respondents have violated the Petitioners' right and freedom from slavery and servitude by failing to enact a Labour Migration Management Bill to oversee labour exploitation by Middle East countries, by explaining that the Senate's mandated under Article 96 of the Constitution is to "(1) ...represent the counties, and serves to protect the interests of the counties and their governments; (2) ...participate in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113; (3) determine the allocation of national revenue among counties, as provided in Article 217, and exercise oversight over national revenue allocated to the county governments; and (4) ...participate in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145." It is averred that the law-making function of the Senate is limited to considering, debating and approving Bills concerning counties.

62. The 7th Respondent takes the position that the Petitioners should have first submitted a Petition to Parliament before instituting these proceedings, requesting Parliament to enact a Labour Migration Bill to address the plight of migrant workers working in Middle East countries, as authorized by Standing Order 130 of the Senate Standing Orders on introduction of Bills to the Senate; Articles 37 and 119 of the Constitution which empower a member of the public who wishes Parliament to enact any legislation to petition Parliament; the Petition to Parliament (Procedure) Act Cap 7E which gives effect to Articles 37 and 119 of the Constitution; and Standing Order 232 of the Senate Standing Orders which further elaborates on the manner in which a Petition may be introduced in the Senate.
63. It is their averment that as there was no petition to Parliament prior to filing this suit, the Petition violates the doctrine of Constitutional Avoidance which dictates that a case should not be resolved by deciding a constitutional question if it can be resolved in some other mechanism.
64. While noting that the Petitioners make reference to the report on labour migration tabled by the Senate Standing Committee on Labour and Social welfare and aver that the Senate considered the issues touching on labour migration wherein it was recommended that the Labour migration management Bill be enacted, the 7th Respondent clarifies that the issues touching on labour migration and migrant workers were considered by the Senate Standing Committee of the twelfth (12th) Parliament whose term lapsed pursuant to Article 102(1) of the Constitution. The recommendations of the Senate Standing Committee of the twelfth (12th) Parliament are not binding on the Senate of the thirteenth (13th) Parliament unless adopted or implemented by the Senate.

65. Following the general elections conducted on 4th August, 2022 and pursuant to Article 124(1) of the Constitution, the Senate of the thirteenth (13th) Parliament established the Senate Standing Committee on Labour and Social welfare comprising of Senators elected during the general elections held on 4th August 2022 and Senators nominated pursuant to Article 98(1) of the Constitution, whose membership is distinct from that of the twelfth (12th) Parliament. The thirteenth (13th) Parliament has not had an opportunity to consider the challenges being faced by migrant workers as elaborated in the Petition dated 25th February 2025, which would have been triggered by a petition to Senate as described.
66. It is confirmed that the Labour Migration and Management Bill (Senate Bill No. 42 of 2024) was published on 26th July 2024 and introduced for First Reading in the Senate on 18th September 2024. The purpose and import of the Bill is to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and to safeguard the rights and welfare of job seekers and migrant workers. One of the measures proposed in the Bill for the protection of rights and freedoms of migrant workers is the deployment of a labour attaché to a Kenya mission whose function shall be to monitor the welfare of migrant workers and promote awareness of their rights to minimize on violation thereof, and to monitor the implementation of Bilateral Labour Agreements.
67. In line with Article 118(1)(b) of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Senate Standing Committee on Labour and Social Welfare invited members of the public to submit written memoranda on the Bill. Further, the Committee held a public hearing session on 24th October 2024 with various government ministries, agencies and institutions including the Ministry of Labour and Social protection, National Employment

Authority and Association of Skilled Migrants Agencies of Kenya. The 7th Respondent affirms that the Senate Standing Committee on Labour and Social Welfare received submissions of memoranda from members of the public and stakeholders and having accepted some of the proposals, recommended that the Bill be adopted with the proposed amendments. The report by the Senate Standing Committee on Labour and Social welfare was tabled on 15th July 2025, but the Labour Migration and Management Bill is yet to be considered by the Committee of the whole Senate and is therefore pending before the Senate.

68. In light of the above, the 7th Respondent states that the orders sought against the 7th Respondent are premature and contravene the doctrine of ripeness. They argue that to the extent that Article 94 of the Constitution has reposed the specific mandate of legislating laws to Parliament, the Courts ought to give Parliament sufficient time to discharge its mandate and can only intervene where it is demonstrated that Parliament has acted in contravention of the Constitution.
69. The Court is urged by the 7th Respondent to take into advisement previous decisions of the Court where it was held regarding the mandate of Parliament and the Judiciary that the court cannot compel promulgation of a law or an amendment thereof, as relations between Parliament and the Judiciary should be governed by respect for Parliament's primary responsibility for law making on the one hand and for the Judiciary's responsibility for the interpretation and application of the law on the other hand; and that the Court cannot direct Parliament on the manner of execution of its Constitutional mandate, but can only make a declaration against actions of Parliament that are contravention of the Constitution.

1st Interested Party

70. In reply to the Petition, the 1st Interested Party elucidates that it is a Constitutional Commission established under Article 59(4) of the Constitution of Kenya and Section 3 of the Commission on Administrative Justice Act, 2011 with the mandate to investigate any conduct in state affairs, or any act or omission in public administration by any state organ, state or public officer in National and County Government that may result in impropriety or prejudice. It therefore clarifies that its contribution to this case is limited to maladministration issues within the conduct of public offices and public officers.
71. The 1st Interested Party avers that it conducted, in accordance with Section 8 as read with Sections 26, 27, 28 and 29 of the Commission on Administrative Justice Act 2011, a systematic investigation into the plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia in order to interrogate the shortfalls in the measures put in place by the Kenyan Government to protect Kenyan migrant workers.
72. Following interviews with officers and after gathering the relevant documents from the Ministry of Labour and Social Protection, the National Employment Authority, the Commissioner of Labour, Ministry of Foreign and Diaspora Affairs, the Directorate of Immigration Services, and the Association of Private Employment Agencies, who include the 1st to 4th Respondents in this suit, the Interested Party established that some Kenyan migrant domestic workers in Saudi Arabia had experienced various forms of abuses, and that the recruitment and management of Kenyan migrant workers was undertaken in a disjointed manner by the relevant stakeholders who work independent of each other.

73. It is averred that the Commission's investigations also found that there was no accurate data on migrant domestic workers in Saudi Arabia and that the current legal framework is weak and therefore, cannot address some of the issues effectively.
74. Upon conclusion of the 1st Interested Party's investigations, it made a range of recommendations including the establishment of a multi-agency working platform for all stakeholders; and the making of certain additions to the draft Labour Migration Management Bill, which is meant to provide a national legal framework for the recruitment and management of migrant workers in Kenya.
75. The 1st Interested Party avers that it prepared a report on its findings pursuant to Section 42 of the Commission on Administrative Justice Act 2011, and disseminated the same to the relevant stakeholders. Further, it invited the relevant stakeholders vide letters dated 21st September 2022 to attend a stakeholder engagement which was held on 26th September 2022.
76. Vide a letter dated 2nd November 2022 by the 1st Interested Party to the Principal Secretary, Ministry of Labour; the Acting Director, National Employment Authority; the Director General, National Industrial Training Authority; the Director General, Directorate of Immigration and Citizen Services; and the Principal Secretary, Ministry of Foreign and Diaspora Affairs, the 1st Interested Party requested to be provided with an update to the Commission on the step(s) taken towards the implementation of the Commission's recommendations. Vide a letter dated 3rd November 2022, the 1st Interested Party also sought audience with the then Cabinet Secretary, Ministry of Foreign Affairs to share the Commission's investigation findings and recommendations on the plight of migrant domestic

workers in the Kingdom of Saudi Arabia; and also sought audience with the Diaspora Affairs and Migrant Workers Committee at the National Assembly, to share its investigations, findings and recommendations as aforesaid. At the time of filing the instant Petition, the 1st Interested Party's letters dated 2nd November 2022 to the relevant stakeholders seeking an update on the Commission's investigations, findings and recommendations, had not been actioned.

77. The 1st Interested Party takes the position that the unresponsiveness of the relevant stakeholders to the Commission's letters dated 2nd November 2022, and their failure to implement its recommendations, is a violation of Articles 47, 59 (2) (1) of the Constitution, the Commission on Administrative Justice Act, 2011, and the Fair Administrative Action Act, 2015, and the Constitutional rights of the Petitioners. It states that on its part, it fulfilled its mandated as described on matters relating to the plight of migrant domestic workers in the Kingdom of Saudi Arabia.

4TH Interested Party

78. It is the 4th Respondent's case that migration for domestic work affects victims of economic and structural vulnerabilities, hence it is important for the state to put in place robust legal and institutional safeguards for the protections of workers during labour migration. This obligation of the state flows from both the Constitution and Kenya's international commitments to uphold the rights and dignity of workers, especially those in precarious sectors like domestic work.
79. The 4th Interested Party concludes that not only does the Kenyan government fail to comply with these obligations, it actively promotes the migration of domestic workers to GCC countries

without effective safeguards to protect their lives and livelihoods. The 4th Interested Party Union has therefore been forced, with its limited resources, to provide crucial support to its members and other affected migrant domestic workers to mitigate the failures of the Respondents by:

- a) Establishing a migration coordination desk which develops and facilitates training programmes for prospective migrant workers, particularly domestic workers, with the objective of equipping them with knowledge of their rights, obligations, safe migration practices, and avenues for redress in cases of abuse. The 4th Interest Part confirms that the training has had over 1,000 participants.
- b) Operating a dedicated help desk, including a toll-free line 0800 722 832, through which migrant workers and their families can seek advice, emergency assistance, or referral to relevant state and diplomatic authorities.
- c) Facilitating the repatriation of migrant domestic workers who have been the victims of exploitation, non-payment of wages, unlawful retention of travel documents, or physical and psychological abuse while abroad.
- d) Engaging relevant Government Ministries and Departments to secure redress for affected migrant domestic workers, including the safe return of Kenyan migrant domestic workers in distress. The 4th Respondent cites a notable case of V.K who was repatriated in September 2024 through the Union's intervention.
- e) Filing a court case, namely ELRCC 106 of 2023 Lucy Ngala & 5 others versus Christine Anyango Ogwe & another, on behalf of 6 potential domestic workers who were defrauded by illegal recruitment agents and faced the risk of potentially exploitative foreign contracts of

employment. The recruitment agency at the first court appearance admitted liability and was ordered to refund the migrant workers the fees they had paid.

- f) Establishing structured mechanisms for organizing returnee migrant domestic workers, with the aim of facilitating reintegration, documentation of grievances, psychosocial support, and continued union membership and representation, under KUDHEIHA MIGRANT DOMESTIC WORKERS ASSOCIATION (KMDWA). The 4th Interested Party confirms that it has a membership of over 2000 migrant domestic workers.
- g) Contributing to the formulation, review, and advocacy for adoption of the Labour Migration Policy, which came to effect in August, 2022.
- h) Engaging in consultations and submissions on the Labour Migration Bill, whose objective is to create a comprehensive legal framework for the protection of migrant workers' rights, and has submitted shadow reports to United Nations treaty bodies including the 2024 review of Kenya under the Convention on Elimination of Racial Discrimination.
- i) Through the toll-free line and help desk, handling an annual average of 300 to 500 calls to address distress calls, repatriation of migrant domestic workers, demand for unpaid wages, pre-departure inquiries and case litigation follow-up.
- j) Through its migration legal desk in the year ending 2024, managing to address 20 cases of safe migration violations, including a return of travel documents of P.N. that were illegally withheld by a recruitment agency.
- k) In the year 2023/2024, in partnership with the International Labour Organization, undertaking reintegration of 660 migrant returnees through entrepreneurial skills development.

80. The 4th Interested Party agrees that its members have frequently reported exploitation at the recruitment stage characterized by a lack of transparency in broker-agent-worker

arrangements. They confirm that specifically, their members confirm that workers are often induced into contracts that they do not fully understand as they are worded in technical legal language and/or a foreign language (usually in Arabic); charged excessive and/or illegal recruitment fees; denied the opportunity to independently verify contracts before departure as most report that their contracts are substituted on their way to the airport; and/or many find that the actual job is not what was promised in the original contract.

81. The 4th Interested Party indicates that the operation of rogue recruitment agencies facilitates the exploitation of workers at the recruitment stage, and this is encouraged by inconsistent enforcement of the National Employment Act, 2016 and its subsidiary legislation which has provisions to regulate the licensing of recruitment agencies. As a result, agencies continue to operate outside the legal framework, charging fees against the Private Employment Agencies' Regulations provisions, falsifying contracts, and misrepresenting job conditions. The 4th Interested Party blames the Respondents' disjointed efforts for failing to effectively regulate and hold agencies accountable. The victims of the violations have no remedies in Kenya and abroad.
82. The 4th Interested Party confirms the existence and widespread use of the kafala (sponsorship) system in many Middle Eastern and gulf countries which render the Kenyan migrant domestic workers legally dependent on their employers, and unable to leave without the consent of the private employer. Under the kafala system, it is difficult for a worker to seek justice in the destination country, often because domestic workers are entirely outside the legal framework for labour law protection. It is averred that in most of the GCC countries, migrant workers are denied the right to the freedom of association, and the right to organise and collectively bargain.

As a result, there are no unions to advise them of their rights and remedies. It is the 4th Interested Party's case that the kafala system, even in reformed forms, is inherently incompatible with the principles of decent work and dignity per ILO Conventions No. 29, 189 and 190.

83. The 4th Interested Party blames the Respondents for continuing to enter into bilateral labour agreements with Gulf States, often negotiated in secret without any trade union or public input, without securing reforms to mitigate the harms of the kafala system, and securing freedom of association and collective action in bilateral agreements. As a result of the exclusion of trade unions in bilateral agreement negotiations, it is stated that agreements have been entered into that prioritize diplomatic and economic interests over the protection of citizens' labour rights while abroad.
84. Further, the 4th Interested Party agrees with the Petitioners that the existing pre-departure training curriculum is inadequate as it provides minimal and superficial information focusing mainly on the tasks to be carried out by the domestic worker. They highlight that the 1st Interested Party herein, the Commission on Administrative Justice, and other public bodies indicate that the training often neglects to provide a comprehensive understanding of destination countries' legal frameworks, including specific labour laws, criminal procedures, and the complexities of the kafala (sponsorship) system. It also fails to equip migrant workers with a basic understanding of safe and accessible channels for reporting abuse, the specific contact information for Kenyan embassies and consulates, or practical strategies for safely exiting abusive situations. They point out that the current curriculum is offered by the 5th Respondent for a duration of 30 days only. They complain that families of migrant domestic workers are not involved in the training process, nor are they furnished with copies of

employment contracts or emergency contacts. This omission leaves families ill-equipped to support their kin in cases of abuse, disappearance, or contract substitution, despite being the most immediate and accessible support network for workers abroad.

85. It is confirmed by the 4th Interested Party that migrant domestic workers have frequently been subjected to exploitative working and living conditions, including excessively long hours, confiscation of travel documents, denial of rest days, non-payment or underpayment of wages, sexual harassment, rape, physical assault, denial of medical care, and restrictions on freedom of movement. They corroborate the Petitioners' claim that the complaints and dispute resolution mechanisms said to be available to workers in the named Middle Eastern countries are inaccessible, inadequate and ineffective, forcing them to reach out to the trade unions, private individuals and the general Kenyan public on social media platforms in order to be rescued. The victims rarely receive compensation for the harms that they have suffered from the Government.
86. They state that these conditions violate the right to fair labour practices under Article 41 of the Constitution; amount to degrading treatment contrary to Article 28 of the Constitution; ILO Conventions No. 189 and 190 and all of the ILO Core Conventions including the Forced Labour Conventions (C.29, C. 105, P.29, and R.203); and Article 5 of the African Charter on Human and Peoples' Rights.
87. On the issue of re-integration after returning to Kenya, the 4th Interested party states that despite being aware of the risks and recurrent violations in the Middle East, many returnee migrant domestic workers are compelled to seek employment in the Middle East again, due to stigma

and rejection from their families and communities, difficulties in social reintegration, and the absence of sustainable livelihood options or decent alternative work opportunities upon return. In some cases, the returnee migrants are weighed down by indebtedness arising from recruitment fees or loans taken prior to migration.

88. The 4th Interested Party blames the State, once again, for structural gaps and for failing to meet its obligation to adopt comprehensive reintegration and economic empowerment measures, to reduce the vulnerabilities that force returnees into repeated cycles of unsafe migration. They aver that the State has also failed in its obligations to respect, protect and fulfil the right to decent work in Kenya so that workers remain in their country of origin, and are not compelled to migrate due to economic stress.
89. The 4th Interested Party highlights the failure of the State to implement ratified ILO and UN Conventions through Bilateral Labour Agreements by incorporating enforceable protections into the agreements. In particular they cite the refusal to implement the protections contained in the ILO Forced Labour Conventions; United Nations Conventions such as the International Covenant on Economic, Social & Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) all of which impact the human rights of migrant domestic workers, have recognized the specific gendered impacts of seemingly neutral laws, and that overlapping combinations of vulnerability can exacerbate disadvantage. It sees this as a breach of the State's constitutional and International law obligations to take the necessary steps to protect the rights and interests of its citizens both inside and outside the country.

90. In addition to the failure to implement the above specified Conventions through Bilateral Agreements, the 4th Interested Party also decries the failure of the Respondents to ratify ILO Conventions 189 on decent work for domestic workers, & 190 on violence and harassment in the world of work, which would protect migrant workers. In particular, they aver that Convention 189 ensures improved regulation of recruitment agencies and enhanced access to justice for migrant workers. The 4th Interested Party indicates that implementation of the Convention in countries such as Uruguay and South Africa has led to the establishment of stronger inspection regimes, stricter licensing requirements for recruitment agencies, and simplified complaints procedures for workers.

91. The 4th Interested Party's position is that the Petition is meritorious and raises critical questions of migrant domestic workers' rights that are deserving of the Court's attention. It adds that the violations suffered by the Petitioners are a direct consequence of the State's failure to implement and enforce its constitutional and international obligations, despite the well recognized and widely publicized nature of the harms suffered by Kenyan migrant domestic workers.

The Joint Amici Curiae

92. The Amici Curiae provided the Court with the much needed and appreciated history of trafficking in persons as a form of indirect discrimination against women, by way of background to the challenges facing labour migrants, who are mostly women who are overrepresented in domestic work, from Kenya to the Middle East. They also explored the nature and extent of State obligations to protect labour migrants against trafficking, concluding that:

- a) Under Articles 5, 6, 8 and 9 of the Palermo Convention the State is required to have appropriate and specific laws and regulations addressing trafficking for labour exploitation, ensure that its domestic legal or administrative system contains measures that provide assistance to trafficking victims, and return victims for their safety to their countries of origin without undue or unreasonable delay;
- b) Under Articles 2, 3 and 6 of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) the State is required to pursue a policy of eliminating discrimination against women through legislative and other measures;
- c) Under the Recommended Principles 4 and 5 and Guidelines 16 the UN Human Rights High Commissioner has explained that the obligation to prevent trafficking includes a responsibility to address demand as a root of trafficking, with a positive obligation being imposed on States to investigate trafficking in the case of *Rantsev v Cyprus and Russia* Application No. 25965/04, Judgment of 7 January 2010 European Court of Human Rights.
- d) Under General Recommendation No. 38, the CEDAW committee has affirmed that it is the duty of States' both individually and collectively, to prevent women and girls from exposure to the risk of being trafficked, with States also being obliged to discourage the demand that fosters exploitation and leads to trafficking.
- e) Under Articles 2, 8, 9, 10 and 26 of the International Covenant on Civil and Political Rights (ICCPR) States are mandated to provide remedy to any person whose rights or freedoms have been violated, ensure that no one is held in servitude, or required to perform forced or compulsory labour, uphold the right of every person to liberty and security of person, ensure that all persons deprived of their liberty are treated with humanity and with respect for their inherent dignity, and prevent discrimination;

- f) Under Articles 2 and 3 of ICESCR States are required to introduce legislative measures in a manner that does not result in discrimination on grounds of race, sex or social origin, and that ensures equal enjoyment of economic and social rights by men and women;
- g) Under Articles 5, 6 and 15 of the African Charter on Human and People's Rights all forms of exploitation and degradation, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment are prohibited, every individual is assured of liberty and the security of his person, and every individual is assured of the right to work under equitable and satisfactory conditions and to receive equal pay for equal work;
- h) Under Article 4(2)(g) of the Maputo Protocol States are mandated to prevent and condemn trafficking in women, prosecute perpetrators of such trafficking and protect those women most at risk of trafficking; and
- i) Under Articles 5 and 36 of the Vienna Convention on Consular Relations (the "VCCR") and the Palermo Protocol, the State has the obligation to provide consular assistance/protection to victims of trafficking abroad, which includes assistance in securing legal representation, documentation, shelter, and safe return.

93. The Amici Curiae further provided a comparative analysis of best practices from other common law jurisdictions on the protection of domestic workers from labour exploitation, focusing on protections offered in jurisdictions such as the United States (albeit a non-common law jurisdiction), South Africa, Canada, Singapore, and Hong Kong.

DETERMINATION

94. Following directions by the court that parties should file written submissions, the parties complied.

Issues for determination

95. In their submissions the Petitioners identified the following issues for determination:-

- i. Whether abuse, human trafficking, and deaths of Kenyan migrant workers in the middle east are prevalent and systemic.
- ii. Whether the Petitioners and victims of Middle East abuses were and are to entitled to effective protection by the State against modern day slavery, human trafficking, violence, physical injury, threats, deportation, rape, death and other human rights violations.
- iii. Whether the state failed, neglected, and abdicated its constitutional, statutory, and international obligations to protect the Petitioners, Kenyan migrant workers from systemic abuse, human trafficking, exploitation, and death in the Middle East.
- iv. Whether the actions, omissions and complicity of the state resulted in systemic violations of the constitutional and international human rights of Kenyan migrant workers, including the right to life, human dignity, freedom from slavery, servitude and torture, the right to information, fair labour practices, and the national value of accountability.
- v. Whether an order for immediate cessation/suspension of labour migration to the middle east should issue.
- vi. Whether relief for evacuation/repatriation and investigation of deaths of migrant workers should issue.
- vii. Whether the state should be directed to enhance public awareness, education, and reintegration programmes for returned migrant workers.
- viii. Whether the state should be directed to provide data, protect traveling migrant workers, and return confiscated documents.
- ix. What is the measure of damages the Petitioners are entitled.

96. The 1st, 2nd, 3rd, 4th, 5th and 8th Respondents, in their submissions dated 22nd February 2026, submitted generally on the Petition.
97. The 6th Respondent in their submissions dated 4th November 2025, identified the following two issues for determination:-
- i. Whether the 6th Respondent has been properly joined in the Petition.
 - ii. Whether the Petition is ripe for determination.
98. The 7th Respondent identified the following issues for determination in his submissions dated 11th December 2025:-
- i. Whether the Petition offends the Doctrine of Exhaustion.
 - ii. Whether this Honourable Court can compel the 7th Respondent to enact legislation.
 - iii. Whether the report of the Senate Standing Committee of the 12th Parliament is binding on the Senate Standing Committee of the 13th Parliament.
 - iv. Whether the Petitioners are entitled to the reliefs sought.
99. The court discerned the issues to be addressed in the petition to be -
- i. Whether abuse, human trafficking, and deaths of Kenyan migrant workers in the middle east are prevalent and systemic, Whether the Petitioners and victims of Middle East abuses were and are to entitled to effective protection by the State against modern day slavery, human trafficking, violence, physical injury, threats, deportation, rape, death and other human rights violations. Whether the state failed, neglected, and abdicated its constitutional, statutory, and

international obligations to protect the Petitioners, Kenyan migrant workers from systemic abuse, human trafficking, exploitation, and death in the Middle East. Whether the actions, omissions and complicity of the state resulted in systemic violations of the constitutional and international human rights of Kenyan migrant workers, including the right to life, human dignity, freedom from slavery, servitude and torture, the right to information, fair labour practices, and the national value of accountability. In essence whether the petition had merit.

- ii. What remedies were available to the petitioners

Decision

100. It is not in dispute the Court has jurisdiction to hear and determine cases involving alleged violation of Constitutional provisions which flow from employment and labour relations as held by the Supreme Court in Petition No. E004 Of 2023 As Consolidated With Petition No. E002 Of 2023- Kenya Tea Growers Association & 14 others v National Social Security Fund Board of Trustees (Koome; CJ & P, Mwilu; DCJ & V-P, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ) . This case would fall within the jurisdiction of the court in that sense, as it relates to migrant workers who are issued with travel permission and visas, and their foreign contracts of service attested by labour officers in the Ministry of Labour pursuant to the provisions of section 82-85 of the Employment Act.

101. The facts of the case of all the parties are as summarized above.

102. On the Laws applicable to labour migration and the substratum of the Petition, I have identified the following:-

Article 39 of the Constitution which relates to freedom of movement. It states that:

"39. Freedom of movement and residence

(1) Every person has the right to freedom of movement.

(2) Every person has the right to leave Kenya.

(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya.

103. However, under Articles 21 and 22 of the Constitution, a right or fundamental freedom may be limited by law. They provide that: "(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—(a) the nature of the right or fundamental freedom; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose. (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—(a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation; (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content. (3) The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied. (4) The provisions of this Chapter on equality shall be qualified to the extent strictly

necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

(5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—(a) Article 31 — Privacy; (b) Article 36 — Freedom of association; (c) Article 37 — Assembly, demonstration, picketing and petition; (d) Article 41 — Labour relations; (e) Article 43 — Economic and social rights; and (f) Article 49 — Rights of arrested persons.

104. Article 25 provides for Fundamental Rights and freedoms that may not be limited to wit—Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited—(a) freedom from torture and cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) the right to a fair trial; and (d) the right to an order of habeas corpus." The petitioners allege violations of these hallowed rights in the labour provisions in the Middle East. It is the opinion, therefore, that freedom of movement and the right to leave Kenya as provided by Article 39 (1) and (2), may be limited by law where it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. I find the allegations of ill treatment of domestic workers from Kenya destined to various countries in the Middle East are not contested, and the Government has in the past even temporarily banned the migration. The said limitation to the freedom of movement and freedom to leave Kenya, specifically for workers emigrating to the Middle East, may be justified by the Article 26 (1) right to life; Article 28 right to human dignity; Articles 29 right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause, detained without trial, except during a state of

emergency, in which case the detention is subject to Article 58, subjected to any form of violence from either public or private sources, subjected to torture in any manner, whether physical or psychological, subjected to corporal punishment; or treated or punished in a cruel, inhuman or degrading manner; Article 30 on right against slavery or servitude, and forced labour; and the Article 41 (1) and (2) right o fair labour practices.

105. Further, the limitation may be justified by Section 4 of the Employment Act which contains a prohibition against forced labour, in line with ILO Convention No. 105 of 1957. Section 2 of Employment Act 2007 defines “forced or compulsory labour” as any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service. The court finds that this issue has been litigated before in the High Court where the petitioners sought to lift the ban on recruitment of domestic workers in the Middle East. The dispute was adjudicated in Khobesh Agencies Limited & 32 others v Minister of Foreign Affairs & International Relations & 4 others [2013] KEHC 6058 (KLR). The exparte applicant in the judicial review sought for the following orders-

‘1.An order of certiorari to remove into the High Court for the purpose of quashing the decision by the Minister of Foreign Affairs and International Relations, the 1st Respondent herein, contained in a Press Statement released on Friday the 22nd day of June, 2012 by the Minister for Foreign Affairs and Political and Diplomatic Secretary suspending recruitment and export of domestic workers to the Middle East;

2.An order of prohibition issued to the 1st respondent, the 1st interested party and the 2nd interested party or any of their employees, agents and/or servants from barring any employees recruited by the Applicants headed to the Middle East to work in the said region;

Justice Odunga, HC (as he then was) held as follows- ‘33. That the executive is under a duty to ensure the welfare of its citizens is to be found in Article 21(1) which provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. For the Government to knowingly permit its citizens to leave the country either voluntarily or forcefully to face cruel, inhuman and degrading treatment abroad would be an abdication on the part of the Government of its obligation under Article 21(1) of the Constitution. In Kaunda and Others vs. President of the Republic of South Africa [2004] ZACC 5 the Constitutional Court of South Africa held:

“The advancement of human rights and freedoms is central to the Constitution itself. It is a thread that runs throughout the Constitution and informs the manner in which Government is required to exercise its powers. To this extent the provisions of section 7(2) are relevant, not as giving our Constitution extraterritorial effect, but as showing that our Constitution contemplates that government will act positively to protect its citizens against human rights abuses.” In Minister of Home Affairs and Others vs. Emmanuel Tsebe and Others [2012] ZACC 16, the same Court was of the view, which view I certainly share, that if the State hands over a person to another state in which his rights as a person enshrined in our Constitution are certain to be violated, we shall have failed to protect, respect and promote the right to life, the right to human dignity and the right not to be subjected to cruel, inhuman and degrading treatment or punishment of that person, all of which are rights our Constitution confers on everyone. Accordingly, I find that there was nothing wrong about the steps the Government of Kenya took in protecting its citizens from the risk of cruel, inhuman and degrading treatment in the Republic of Saudi Arabia until such a time as the Republic of Saudi Arabia shall have put into place mechanisms which ensure that the citizens of this Country do not face such treatment in that country. The Court, however recognizes that the step taken by the

Government is a limitation on freedom of movement and residence in particular the right of every person to leave Kenya which right cannot be fully realized if a person can only leave Kenya for a particular destination and not others.' I do find that the court has held the right and freedom of movement can be curtailed as was the case in the decision. The migration was to the same destination of middle east as the instant case.

106. The petitioner has challenged the manner in which the recruitment is done and the issue of the migrant's contracts. The Employment Act had provided a comprehensive legal framework for foreign contracts of service as follows-

‘ 82. Form and attestation

A foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a labour officer.

83. Requirement before attestation

A foreign contract of service shall not be attested unless the labour officer is satisfied—

- (a) that the consent of the employee to the contract has been obtained;
- (b) of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract;
- (c) that the contract is in the prescribed form;
- (d) that the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by the employee;
- (e) that the employee is medically fit for the performance of his duties under the contract; and

(f) that the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

84. Security in foreign contract of service

(1) When the employer who enters into a foreign contract of service does not reside or carry on business within Kenya, the employer shall, or where the employer resides in Kenya, the labour officer may require the employer to, give security by bond in the prescribed form, with one or more sureties resident in Kenya and approved of by the labour officer for the due performance of the contract in such sums as the labour officer considers reasonable.

(2) Where the employer has an authorised agent resident in Kenya, the Cabinet Secretary may require that the security bond specified in subsection (1) be given by the agent and the agent shall personally be bound by the terms of the bond notwithstanding the disclosure of his principal. [Act No. 19 of 2015, s. 161.]

85. Offence to induce person to proceed abroad under informal contract

A person who—

(a) employs, engages, or knowingly aids in the employment or engagement of, a person with the intention that when so employed or engaged that person shall proceed outside the limits of Kenya; or (b) induces or attempts to induce an employee to proceed outside the limits of Kenya, unless he has under this Act, duly entered into a foreign contract of service with that person or employee, as the case may be, commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.” In my mind, the above legal framework is comprehensive and sufficient to protect Kenyan immigrant workers in the Middle East from the maltreatment as alleged in the petition. It is evident to the court that there is abundant laxity in the enforcement of the

law by the labour officers who are under the 1st respondent. Had the law been complied with we would not have the thriving of the Kafala system which is akin to hold the migrant workers in servitude. The government has failed the migrant workers and exposed them to exploitation, slavery, cruelty and even detention by failure to comply with sections 82-85 of the Employment Act.

107. The affidavit of the 1st respondent confirmed to the court that the agents had not been compelled to provide security bond for the employees they sent abroad. Ms Njogu stated as follows – ‘as regards one sad case of death of the migrant worker- ‘On the allegations regarding the death of Lucy Wambui Ng' ang' a, it is averred that the Government, through the Ministry of Foreign Affairs at the time, actively engaged the Kenyan Mission in Riyadh to facilitate the repatriation of her remains and to provide consular support to her family. The matter occurred in 2020, prior to the establishment of the State Department for Diaspora Affairs, but the Ministry of Foreign Affairs maintained continuous communication with the Kenyan Embassy in Riyadh and with the deceased's family. The Embassy provided the family with a quotation from Baghdad International Bureau Funeral Office amounting to USD 7,000 required for the repatriation. Despite repeated communication, the family did not remit the required funds, and as a result, the repatriation process could not proceed. This matter was handled within the existing consular frameworks prior to the establishment of the State Department for Diaspora Affairs, and every available effort was made by the relevant authorities to assist the family of the deceased.’ The court finds that had the concerned labour officer complied with the law (sections 82-85 of the Employment Act), the security bond would have catered for the cost of repatriation instead of the Ministry's indignity in requiring the family of the deceased to pay

for the cost. Due to poverty, the family is condemned to anguish over the loss of their late beloved caused by the failure of the government's duty.

108. The court is persuaded to accept the allegations of mistreatment of Kenyans seeking and working in the middle east as alleged, taking into account the previous ban by the Government of migration of domestic workers to the area which was the subject of litigation in Khobesh Agencies Limited & 32 others v Minister of Foreign Affairs & International Relations & 4 others [2013] KEHC 6058 (KLR). I was persuaded by the decision cited the Judge in that case being Kaunda and Others vs. President of the Republic of South Africa [2004] ZACC 5 where the Constitutional Court of South Africa held: “The advancement of human rights and freedoms is central to the Constitution itself. It is a thread that runs throughout the Constitution and informs the manner in which Government is required to exercise its powers. To this extent the provisions of section 7(2) are relevant, not as giving our Constitution extraterritorial effect, but as showing that our Constitution contemplates that government will act positively to protect its citizens against human rights abuses.” Indeed, this is also the position of Kenya, our Constitution and the Employment Act and related laws contemplate that the government of Kenya, through its relevant ministries, will act positively to protect its citizens providing labour in foreign countries against human rights abuse and deaths.

109. The evidence presented by the Petitioners is that the terms of their contracts of employment are misrepresented by the recruiters before they leave Kenya and changed later; that they are subjected to torture and inhuman treatment by being denied their wages which amounts to slavery/forced labour per the case of Jonathan Spanglar v Centre for African Family Studies (2017) eklr; where workers were alleged to be have been denied food, physically, emotionally,

psychologically and sexually abused; denied food, overworked, prevented from getting enough sleep, their passports and documents confiscated and held in detention centres prior to deportation. The allegations by the petitioners, in my view, would justify the orders sought to vet the recruiting agents afresh among other measures. This has been done before. I find the respondents' did not rebut the allegations of non-compliance with the provision of foreign contracts of service, the mistreatment and death of Kenyan domestic workers in the Middle East, thus violations of the right to life, cruel treatment and death and related to dignity.

110. The parties have cited various International Instruments which support their case, most notably the ILO Domestic Workers Convention 2011 (No. 189); and the International Migration Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, which unfortunately are yet to be ratified by the Kenyan Government, and also by countries in the Middle East. In fact, one of the prayers sought by the Petitioners is that the AG and Ministries of Foreign Affairs and Labour will initiate the process of ratifying these Conventions, among others. Articles 5, 6 and 9 of the ILO Domestic Workers Convention 2011 (No. 189) provide protections for domestic workers by stating that: Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence; Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy; and Each Member shall take measures to ensure that domestic workers, are entitled to keep in their possession their travel and identity documents. Ratification of these Conventions, would cause them to form part of the law of Kenya under Article 2(6) of the Constitution which would aid enforcement by Kenyan Courts.

111. In the upshot, the court found the allegations by the petitioners were proved on the balance of probabilities to effect that indeed migrant workers in the Middle East were exposed to violations of their fundamental rights against cruel, inhuman, and degrading treatment, torture, slavery and servitude, right to dignity and life. They were exposed to unfair labour practices.
112. The court held the government had failed in its duty to protect the migrant domestic workers from Kenya to the Middle East by failing to comply with the provisions on foreign contracts under sections 82 to 85 of the Employment Act.

What are the available remedies?

113. On whether the Court has jurisdiction to order Parliament to enact legislation, pursuant to the doctrine of separation of powers, the court may not "order" Parliament to enact legislation, but may only make recommendations. Courts routinely make recommendations on issues/problems that Parliament may legislate on, for instance in the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), the Honourable Supreme Court recommended that the Attorney General and Parliament commence an enquiry and develop legislation on the definition of 'what constituted a life sentence'; that could include a minimum number of years to be served before a prisoner was considered for parole or remission, or provision for prisoners under specific circumstances to serve whole life sentences.
114. The Honourable Supreme Court, in the case of *Mitu-Bell Welfare Society v Kenya Airports Authority & 3 others* (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment) upheld the authority of the High Court to issue structural interdicts against Government agencies even in the

interim, let alone as a final order, and held: "We are however, in agreement with the submissions of the appellant and amicus curiae, to the effect that article 23(3) of the Constitution empowers the High Court to fashion appropriate reliefs, even of an interim nature, in specific cases, so as to redress the violation of a fundamental right. As this court has already made an authoritative pronouncement on this matter, we shall say no more. While we acknowledge the fact that the functus-officio doctrine retains its validity, even vitality, in the majority of cases, both criminal and civil, it is our view that in certain situations, this doctrine ought to give way, albeit on a case by case basis. To subject article 23 of the Constitution to the limitations of order 21 of the Civil Procedure Rules, would stifle the development of court-sanctioned enforcement of human rights as envisaged in the Bill of Rights. Where a court of law issues an order, whose objective is to enforce a right, or to redress the violation of such a right, it cannot be said to have abdicated its judicial function as long as the said orders are carefully and judicially crafted. Having stated thus, we hasten to add that, interim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the courts, have to be specific, appropriate, clear, effective, and directed at the parties to the suit or any other State Agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions."

115. The meaning of a structural interdict was clarified in the case of *County Government of Kitui vs. Ethics & Anti-Corruption Commission* (2019) eKLR at paragraph 100, cited in Law Society

of Kenya & 7 others v Cabinet Secretary for Health & 8 others; China Southern Co. Airline Ltd (Interested Party) [2020] KEHC 9970 (Klr) as: "One of the remedies which is now recognized in jurisdictions with similar constitutional provisions as our Article 23 is what is called structural interdict. In essence, structural interdicts (also known as supervised interdicts) require the violator to rectify the breach of fundamental rights under court supervision. Five elements common to structural interdicts have been isolated in this respect. First the court issues a declaration identifying how the government has infringed an individual or group's constitutional rights or otherwise failed to comply with its constitutional obligations. Second, the Court mandates government compliance with constitutional responsibilities. Third, the government is ordered to prepare and submit a comprehensive report, usually under oath, to the court on a pre-set date. This report, which should explicate the government's action plan for remedying the challenged violations, gives the responsible state agency the opportunity to choose the means of compliance with the constitutional rights in question, rather than the court itself developing or dictating a solution. The submitted plan is typically expected to be tied to a period within which it is to be implemented or a series of deadlines by which identified milestones have to be reached. Fourth, once the required report is presented, the court evaluates whether the proposed plan in fact remedies the conditional infringement and whether it brings the government into compliance with its constitutional obligations. As a consequence, through the exercise of supervisory jurisdiction, a dynamic dialogue between the judiciary and the other branches of government in the intricacies of implementation may be initiated. This stage of structural interdict may involve multiple government presentations at several 'check in' hearings, depending on how the litigants respond to the proposed plan and, more significantly, whether the court finds the plan to be constitutionally sound. Structural interdicts thus provide

an important opportunity for litigants to return to court and follow up on declaratory or mandatory orders.

The chance to assess a specific plan, complete with deadlines, is especially valuable in cases involving the rights of ‘poorest of the poor,’ who must make the most of rare and costly opportunities to litigate. After court approval, a final order (integrating the government plan and any court ordered amendments) is issued. Following this fifth step, the government’s failure to adhere to its plan (or any associated requirements) essentially amount(s) to contempt of court”.

116. In Khobesh Agencies Limited & 32 others v Minister of Foreign Affairs & International Relations & 4 others [2013] KEHC 6058 (KLR) where there were similar allegations in the Middle East as concerns the domestic workers and then ban of migration to the Middle East by domestic workers, it was held- ‘37. Accordingly whereas I decline to grant the orders sought in the Notice of Motion dated 4th July 2012, in order for the Constitutional requirement that the limitation must take into account the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose is attained, I direct the Respondents to urgently take measures to engage the Government of the Republic of Saudi Arabia with a view to ensuring that the latter puts into place appropriate mechanisms for the protection of Kenyans who are working for gain in that country. The Respondents to report to this Court what steps they have taken in that direction within sixty days.’” The petitioners have not produced the outcome of the interdict. I find the decision is very relevant to this case as it is the same cause of action. The ban appears to have been lifted; otherwise, we would not have the instant allegations.

117. I did not find any cause of action against the 6th respondent and the 7th respondent. They could only have been placed as interested parties and not respondents. They were not necessary parties as the court has no power to direct parliament on legislation. The Court struck off the 6th and 7th respondents from the petition.

118. The petitioner sought for various relief, which the court proceeded to consider, having found merit in the petition.-

- a) A declaration that the Petitioners and victims of Middle East abuses were and are entitled to effective protection by the State against modern day slavery, human trafficking, violence, physical injury, threats, deportation, rape, death and other human rights violations and the state failed/ neglected and has abdicated on this responsibility. I return this in the positive, having found non-compliance with the provisions on foreign contracts of service by labour officers, which has exposed the migrant domestic workers to exploitation through the Kafala system in the Middle East and other clandestine modes of control of the workers on arrival to the foreign countries.
- b) A declaration that the Respondents failures and omissions of the state as particularized under Paragraph F (1-7) have violated the petitioners' legitimate expectation of state's accountability, rights to life and freedom from torture, right to and freedom from slavery and servitude, human dignity, right to information and right to fair labour practices as enshrined under Articles 10, 26(1), 28 and 29(c) (d) (e) (f), 30, 35 and 41 of the Constitution of Kenya 2010 and Articles 3,4,5,9,15 and 17 of the African Charter on Human and People's Rights and Articles 1, 2, 3, 4, 5, 23 and 24 of the Universal Declaration of Human Rights. The court returned a positive result.

- c) An order for the IMMEDIATE cessation/ suspension of labour migration to the Middle East until the state demonstrates that the basic minimums as set out under Paragraph 121 of the Petition have been met. Paragraph 121 of the Petition reads-
- An order does issue for fresh vetting of all local employment recruitment agencies with immediate effect. The court finds that this is a proportional order instead of a suspension of the labour migration. The court is pleased to issue- An order directing the 1st respondent to carry out fresh vetting of all local employment recruitment agencies with immediate effect.
- d)) An Order does issue, compelling the Respondents to evacuate and Repatriate any Migrant worker stuck and in distress in the Middle East abusive employment, deportation centers, and accommodation centers with immediate effect. I found the order to be too broad and vague. I decline to issue the same. The court noted the position of the 3rd respondent on the financial impact to the families of the migrant worker. The court attributes the issue to non-compliance with section 84 of the Employment Act to wit- ‘Security in foreign contract of service
- e) (1)When the employer who enters into a foreign contract of service does not reside or carry on business within Kenya, the employer shall, or where the employer resides in Kenya, the labour officer may require the employer to, give security by bond in the prescribed form, with one or more sureties resident in Kenya and approved of by the labour officer for the due performance of the contract in such sums as the labour officer considers reasonable.(2)Where the employer has an authorised agent resident in Kenya, the Cabinet Secretary may require that the security bond specified in subsection (1) be given by the agent and the agent shall personally be bound by the terms of the bond notwithstanding the disclosure of his principal.’
- The court issues an order directing the 1st, to the 5th respondents to comply with and enforce the provisions of the law in foreign contracts of service in the Middle East by requiring the

agents to deposit security for repatriation of the migrant workers in distress or in the event of death.

- f. The petitioner further sought for the following order- An order compelling the 1st respondent to table a formal report on the cause of death of the late Lucy Wambui Ng'ang'a and all those who have died under unclear circumstances in the Middle East within three (3) months of the court's judgment. The death was not denied. The court did not find the relevance of presenting the report to the court. The court recommends that this judgment be made available to the Kenya National Human Rights Commission for follow-up.
- g. An order for the repatriation of the body for the late Lucy Wambui Ng' ang' a for a dignified burial at the state expense and a status report be provided within three (3) months of the court's judgment. The court, having found that the state failed to comply with the provisions of section 84 of the Employment Act by issuing an order for a security bond for the deceased, finds that the defence of lack of funds by the family cannot hold. It is an exposure to the family and a violation of their dignity on account of poverty. The court issues an order for the repatriation of the body of the late Lucy Wambui Ng' ang' a for burial at the state expense by the 3rd respondent , and a status report is to be provided within three (3) months of the court's judgment.
- h. The petitioners further sought for the following orders- An order directed at the Attorney General, the Ministry of Foreign Affairs and the Ministry of Labour to initiate the process of ratifying:
 - a) the Private Employment Agencies Convention, 1997;

b) ILO Domestic Workers Convention 2011 (No. 189);

c) the Employment Policy Convention, 1964;

d) the International Migration Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 in accordance with section 7 of the Treaty Making and Ratification Act and a status report be filed before this Honourable Court within 3 months of the court judgment. The court finds that ratification of the convention is a matter of state discretion and akin to legislation. This court has no power to order the state to adopt a convention and can only make a recommendation which it hereby does for the state to consider the ratification of the stated instruments to protect Kenyan domestic workers seeking green pastures in the Middle East.

112. The court exercised judicial restraint taking into account the doctrine of separation of powers between arms of the government and declined to issue the following orders-

1949 An Order does issue suspending the travel of Migrant Workers to the Middle East until Saudi Arabia ratifies C097 Migration for Employment Convention (Revised) C143 Migrant Workers (Supplementary Provisions Convention 1975.

iii. An order for the cessation/ suspension of labour migration to the Middle East countries that lack consulate and embassy presence, lack labour offices and safe houses.

iv. An order directed at the state to ensure establishment of labour offices consulate and embassy presence and safe houses in all Middle East labour destination countries accessible to any Kenyan in distress and a status report be presented to this Honourable Court within one (1) year of the court's judgment.

- v. An order directed at the state particularly the 1st Respondent to fast-track the review of the Bilateral Agreements in place to cover the identified gaps and emerging issues and specifically to renegotiate the terms in the agreements and a status report to be presented to this Honourable Court within six (6) months of the court Judgment.
 - vi. An Order directed at the state particularly the 1st Respondent to fast-track the development and adoption of Bilateral Agreements with the Middle East countries where such agreements have not been developed and adopted and a status report be presented before the Honourable Court within six (6) months of the court judgment.
 - vii. An order directed at the state particularly the 1st Respondent to ensure full implementation of all the BLAs with all Middle East countries and a status report be presented before this Honourable Court within one (1) year of the court judgment.
 - viii. A declaration that the failure to enact the Labour Migration Management Bill and a comprehensive and harmonized labour migration policy that oversees labour exportation has increased the vulnerability of Kenyan migrant workers to abuse and human rights violations.
113. The court directed that in view of the foregoing restraint, the judgment of this honourable court be transmitted to the office of the Attorney General for consideration of legislation of a Labour Migration law and a comprehensive and harmonised labour migration policy.
114. The court exercised judicial restraint having recognized that section 82- 85 of the Employment Act had not been complied with and having issued the order above, declined to issue the

following orders - An order directed at the state, particularly 1st Respondent, to present a status report of its efforts to increase public awareness and education and to address the gaps in the Curriculum of Homecare Management within six (6) months of the court's judgment.; An order directed at the state particularly the 1st Respondent to establish programmes that assist in rehabilitation and reintegration of victims and returnees and a status report be presented before the Honourable Court within six (6) months of the court judgment.; An order directed at the state to provide to the Honourable Court a status of all Kenyan migrant workers number and location of Kenyans abroad and conditions of employment abroad, those in prison facilities and deportation centers, their places of work, current and former migrant workers in distress and stuck and those who have died in the Middle East countries within three (3) months of the court's; An order directing the 1st respondent to cater for travel expenses for the prospective migrant workers to avoid exploitation by their Middle East employers through the Kafala system.; An Order does issue compelling the state to ensure that all identity and travel documents confiscated from the Petitioners are returned to the Petitioners and this to include issuing the 3rd Respondent with a death certificate and regularizing any official documentation due to the Petitioners.; An order does issue for the state to meet any medical and psychosocial costs incurred by the Petitioners as a result of the death and abuses in the Middle East.;

115. The court found that it had no jurisdiction to grant the following order as the children of the deceased are not employees- An order for provision of support for the children of the Petitioners particularly the late Lucy Wambui Ng'ang'a until they attain the age of majority at the state's expense.

116. On the order sought as follows- A declaration that as a result of the breach of rights enumerated above, the petitioners suffered physical, mental and psychological trauma, loss, pain, special and general damages for which they are entitled to compensation and An Order does issue compelling the respondents jointly and severally to compensate the Petitioners as enshrined and provided for under Article 23(e) of the Constitution made up of special damages for the expenses incurred as well as general damages for pain and suffering, mental anguish, psychological trauma, loss of lives and exemplary damages pursuant to the declaration above for the petitioners. I find the declarations issued above vindicate the rights of the petitioners. That the substance of the petition was beyond the violations against the petitioners but on the entire labour migration to Middle East.

Summary of remedies granted

117. The court found merit in the petition and issued the following relief-

- a. The court is pleased to issue a declaration that the Petitioners and victims of Middle East abuses were and are entitled to effective protection by the State against modern day slavery, human trafficking, violence, physical injury, threats, deportation, rape, death and other human rights violations and the state failed/ neglected and has abdicated on this responsibility.
- b. The court is pleased to issue a declaration that the Respondents failures and omissions of the state as particularized under Paragraph F (1-7) have violated the petitioners' legitimate expectation of state's accountability, rights to life and freedom from torture, right to and freedom from slavery and servitude, human dignity, right to information and right to fair labour practices as enshrined under Articles 10, 26(1), 28 and 29(c) (d) (e) (f), 30, 35 and 41 of the Constitution of Kenya 2010 and Articles 3,4,5,9,15 and 17 of the African Charter on

Human and People's Rights and Articles 1, 2, 3, 4, 5, 23 and 24 of the Universal Declaration of Human Rights.

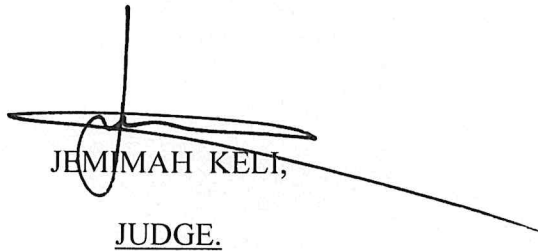
- c. The court issues an order directing the 1st, to the 5th respondents to comply with and enforce the provisions of the law on foreign contracts of service in the Middle East by requiring the agents to deposit security bond.
- d. The court recommends that this judgment be made available to the Kenya National Human Rights Commission for follow-up on cause of death of the late Lucy Wambui Ng'ang'a and all those who have died under unclear circumstances in the Middle East within three (3) months of the court's judgment.
- e. The court issues an order for the repatriation of the body of the late Lucy Wambui Ng'ang'a for burial by her kin, at the state expense by the 3rd respondent, and a status report is to be provided within three (3) months of the court's judgment.
- f. The court is pleased to issue an order directing the 1 to 5th respondents jointly and severally to carry out fresh vetting of all local employment recruitment agencies with immediate effect.
- g. The judgment of this Honourable Court be transmitted to the office of the Attorney General for consideration of legislation of a Labour Migration law and a comprehensive and harmonised labour migration policy

118. The petition was held to have merit. However, I decline to issue the compensation of violation of the constitutional rights of the petitioners as sought. I hold that the petitioners' rights have been vindicated by the issuance of the various declarations and interdicts above.

119. This being a matter of public interest, I order each party to bear own costs.

120. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19th DAY OF JUNE, 2026.


JEMIMAH KELI,
JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Petitioners: John Mwariri and Rwitha

1st, 2nd, 3rd, 4th, 5th and 8th Respondents: - Jepkemei

6th Respondent: absent

7th Respondent: absent

1st Interested Party: Ms Kinyua

4th Interested Party: absent

Amici Curiae: Mwavishi

