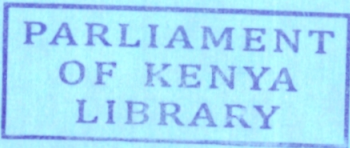


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(No. 2) BILL, 2024**

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SCHEDULE

THE LABOUR MIGRATION MANAGEMENT (No. 2) BILL, 2024

A Bill for

AN ACT of Parliament to provide for the regulation of private employment agencies and the recruitment of workers within and outside Kenya; safeguard the rights and welfare of job seekers and migrant workers; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Labour Migration Management (No. 2) Act, 2024.

Short title.

2. In this Act—

Interpretation.

“Authority” means the National Employment Authority established under section 6 of the National Employment Authority Act;

Cap 227.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to labour;

“Committee” means the Multi Agency Committee on Vetting of Private Employment Agencies established under section 8;

“Commissioner for labour” means the Commissioner for Labour appointed under section 30 of the Labour Institutions Act;

Cap 234.

“county executive committee member” means the county executive committee member responsible for matters relating to labour and social welfare in a county;

“Director-General” means the Director General of the Authority appointed under section 17 of the National Employment Authority Act;

“employer” has the meaning assigned to it in the Employment Act;

Cap 226.

“foreign employment” means the employment of a Kenyan citizen in a country other than Kenya;

“job order” means instructions issued by an employer to a private employment agency to recruit employees on

behalf of the employer and contains information on the job openings the employer seeks to fill and the expected terms and conditions of employment;

“job seeker” has the meaning assigned to it under section 2 of the National Employment Authority Act;

“Labour Attaché” means a public officer deployed to a Kenya Mission for labour and employment duties under section 10;

“labour officer” means a labour officer appointed under section 30 (2) of the Labour Institutions Act; Cap 234.

“labour migration” means the departure of a Kenyan citizen from Kenya for the purpose of employment in any foreign country;

“migrant worker” means a Kenyan citizen who—

- (a) intends to migrate for work;
- (b) is departing to any foreign country for work; or
- (c) is employed in any foreign country.

“Mission” has the meaning assigned to it under section 2 of the Foreign Service Act.; Cap 185E.

“National Industrial Training Authority” means National Industrial Training Authority established under section 3 of the Industrial Training Act; Cap 237.

“pre-departure orientation” means a programme which equips a migrant worker with knowledge, skills and attitude required to facilitate the integration of the migrant worker in a foreign country; and

“private employment agency” means a company, independent of the Government, which provides one or more of the following labour market services—

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship which may arise therefrom; or
- (b) services consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of the tasks.

3. The object of this Act is to —

Object of the Act.

- (a) promote safe, fair, ethical and orderly recruitment of workers;
- (b) protect the rights of job seekers;
- (c) enhance co-ordination of labour migration governance in the Kenya;
- (d) enhance transparency and flexibility in labour migration;
- (e) promote overseas employment;
- (f) protect the human and labour rights and promote the welfare of Kenyan migrant workers;
- (g) maximize participation of Kenya migrant workers in the economic development;
- (h) promote equal treatment of foreigners' migrant workers in Kenya who are lawfully engaged in employment;
- (i) provide a framework for collection, analysis and use of data and information on labour migration and labour migrants; and
- (j) promote opportunities for employment.

4. This Act shall apply to—

Application of the Act.

- (a) private employment agencies;
- (b) the recruitment of Kenyan citizens for employment in Kenya to a foreign country; and
- (c) migrant workers.

5. (1) The government shall deploy migrant workers to countries where the rights of migrant workers are protected.

Conditions for deployment of migrant workers.

(2) The government shall recognise the following measures as a guarantee by the receiving country for the protection and the rights of migrant workers—

- (a) existing labor and social laws protecting the rights of migrant workers;
- (b) signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; or

- (c) existing bilateral agreement or arrangement with the government protecting the rights of migrant workers.

PART II— ADMINISTRATION

6. (1) The functions of the Authority under this Act shall be to—

Functions of the Authority.

- (a) register and regulate private employment agencies;
- (b) develop pre-departure programmes for migrant workers;
- (c) monitor the implementation of the pre-departure orientation programmes;
- (d) identify and create awareness on employment opportunities in any foreign country and facilitate access to the opportunities by migrant workers;
- (e) verify and approve job orders emanating from private employment agencies;
- (f) collect, analyse and disseminate data on foreign employment;
- (g) develop and implement programmes necessary to safeguard the rights and welfare of migrant workers; develop and implement a return and reintegration programme for migrant workers;
- (h) receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person; and
- (i) create public awareness on safe, regular and orderly labour migration.

(2) The Authority shall engage county governments and establish county offices in performance of its functions.

7. The Authority shall, in the performance of its functions under this Act, have the power to—

Powers of the Authority.

(a) summon witnesses and require them to—

- (i) give evidence orally or in writing, on oath or on affirmation; and
- (ii) produce any evidence or exhibit that the Authority considers necessary,

- (b) co-operate and collaborate with other public entities, agencies, any foreign governments, regional and international organizations in the enforcement of this Act;
- (c) obtain professional assistance or advice from any person or organization, whether within or outside the public service, as it considers appropriate; and
- (d) facilitate alternative forms of dispute resolution in disputes arising from this Act.

8. (1) There is established a Multi-Agency Committee on Vetting of Private Employment Agencies.

Establishment of a Multi-Agency Committee on the vetting of Private Employment Agencies.

(2) The Committee shall consist of—

- (a) the Principal Secretary responsible for matters relating to labour or his representative;
- (b) the Principal Secretary responsible for matters relating to foreign affairs or his representative;
- (c) the Commissioner for Labour;
- (d) a representative of private employment agencies nominated by the largest and most representative association of private employment agencies and appointed by the Cabinet Secretary;
- (e) the Director of Criminal Investigations or his representative;
- (f) the Director-General of the National Intelligence Service or his representative;
- (g) the Director of Immigration or his representative; and
- (h) the Director-General.

(3) The Principal Secretary responsible for labour or his or her representative shall be the chairperson of the Committee.

(4) The Director-General shall be the Secretary to the Committee and shall have no voting rights.

(5) The Authority shall be the secretariat to the Committee.

(6) The Committee may invite any public officer or other person or any representative of any body, who in the opinion of the Committee, has expert knowledge in matters relating to the functions of the Committee to attend any meeting of the Committee and participate in the proceedings.

(7) A person who attends a meeting under sub section (6) may, if invited, participate in any discussion at the meeting but shall not vote.

9. The Committee shall be responsible for vetting and approving applications for registration made by private employment agencies.

Functions of the Committee.

10. (1) The Committee shall submit an annual report to the Cabinet Secretary within three months after the end of every financial year.

Reports by the Committee.

(2) The report under subsection (1) shall contain—

- (a) the activities undertaken by the Committee during the year;
- (b) the status of compliance to the registration requirements by private employment agencies; and
- (c) any other relevant matter.

(3) Upon receiving the annual report under subsection (1), the Cabinet Secretary may make such recommendations to the Committee as he or she may consider necessary.

(4) Despite subsection (1), the Cabinet Secretary may, at any time, request for information from the Committee on any matter

11. (1) The Cabinet Secretary shall deploy a labour attaché to serve in each Kenya Mission.

Labour attachés.

(2) The Cabinet Secretary shall consult the Cabinet Secretary responsible for matters relating to foreign affairs before deploying a labour attaché to a Kenya Mission.

(3) The functions of a labour attaché deployed to a foreign country shall be to—

- (a) seek employment opportunities for Kenyans in his or her host country;

- (b) authenticate job orders;
- (c) vet destination employment conditions;
- (d) attend to complaints relating to migrant workers in that country;
- (e) visit workplaces and workers' accommodation facilities to assess working and living conditions;
- (f) monitor the implementation of Bilateral Labour Agreements;
- (g) monitor the welfare of migrant workers and promote awareness of their rights to minimize on violation of their rights;
- (h) collect and collate labour migration data and statistics on Kenyan migrant workers in that country;
- (i) provide labour market information to migrant workers;
- (j) analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country;
- (k) attest foreign contracts of employment;
- (l) monitor situations and labour policy developments in the host country that may affect migrant workers;
- (m) facilitate the provision of counselling services to migrant workers;
- (n) supervise and co-ordinate the operations of safe houses for migrant workers in that country;
- (o) submit to the Cabinet Secretary an annual report and recommendations relating to the conditions of migrant workers working in that country; and
- (p) perform any other function as may, from time to time, be assigned by the Cabinet Secretary.

(4) The report prepared under subsection (3) (o) shall contain the following information —

- (a) a list of migrant workers, with names of trades and professions they are employed in, their working conditions, benefits and challenges, if any;

- (b) a list of cases brought against migrant workers, if any, and details thereof, and information about workers detained or convicted of any offence;
- (c) a list of the migrant workers in distress, the nature of distress and any assistance or services offered by the Kenya mission or the steps taken to resolve the problems of migrant workers, including counselling and legal assistance;
- (d) an estimate of the job opportunities for migrant workers in the respective country;
- (e) the status of the implementation of any existing bilateral agreement regarding the rights of migrant workers in the respective country; and
- (f) any other matter as may be specified by the Cabinet Secretary from time to time.

(5) A labour attaché shall, in the performance of his or her duties, be responsible to the head of Mission.

12. (1) The Cabinet Secretary responsible for matters relating to foreign affairs shall put in place mechanisms to safeguard the welfare of migrant workers including —

Duties of the
Cabinet Secretary
for Foreign
Affairs.

- (a) developing and implementing strategies for migrant workers to participate in the development process;
- (b) developing measures to enhance the safety and security of migrant workers;
- (c) developing and implementing mechanisms for engagement with migrant workers; and
- (d) establishing an administrative and institutional framework for the coordination of matters relating to migrant workers.

(2) The Cabinet Secretary responsible for matters relating to foreign affairs shall, for the effective implementation of subsection (1), —

- (a) facilitate information sharing as a means of ensuring continuous engagement between the national and county governments and migrant workers;

- (b) develop policies to incentivize the participation of migrant workers in the economic development, governance and democratic processes in Kenya;
- (c) establish a collaborative framework with migrant workers to promote Kenya as an investment destination;
- (d) in consultation with other relevant state agencies, put in place fiscal and non-fiscal measures to promote investment, in Kenya, by migrant workers;
- (e) in consultation with the relevant State agencies, put in place measures for the protection of migrant workers including access to legal representation, adequate healthcare services and access to basic services during a pandemic or other emergency in the country of residence;
- (f) develop and regularly update an integrated database on migrant workers and in particular document the expertise and skills of migrant workers;
- (g) liaise with the relevant Cabinet Secretary to facilitate the timely issuance and renewal of passports and the processing of any documents required to be issued by the national government to migrant workers;
- (h) develop a framework for the reintegration of returnees upon arrival in Kenya; and
- (i) nominate recipients of national honours under the National Honours Act.

Cap 216A.

13. A County government shall—

Role of county governments.

- (a) issue county operating licences to private employment agencies;
- (b) in collaboration with the National Employment Authority, establish a database of migrant workers from specific counties;
- (c) develop policies and programmes offering incentives to migrant workers from specific counties to invest in;

- (d) publicise, in consultation with the National Employment Authority and private employment agencies, job vacancies for Kenyan workers outside the country;
- (e) develop county specific investment programmes for migrant workers; and
- (f) facilitate, in collaboration with the national government, the reintegration of returning migrant workers back to counties of origin.

14. (1) A person who intends to operate a private employment agency shall submit an application for a private employment agency county operating licence to the respective county executive committee member.

Application for a county operating licence.

(2) An application for a private employment agency county operating licence shall be in the prescribed form and shall be submitted together with—

- (a) the prescribed application fee;
- (b) the certificate of registration; and
- (c) any other information which may be prescribed in the regulations under this Act.

(3) The county executive committee member shall keep and maintain a register in which shall be recorded all applications made and licences issued under this Act.

(4) The county executive committee member shall, within fourteen days of receipt of an application under this section, consider the application and may—

- (a) where the applicant meets the requirements of this Act, approve the application and issue a licence to the applicant;
- (b) approve the application subject to such conditions as the county executive member may impose; or
- (c) reject the application.

(5) The county executive committee member shall notify the applicant in writing of any decision made under subsection (1) within seven days of the decision being made with reasons therefor where applicable.

(6) A person aggrieved by the decision of the county executive committee member under this Act may apply to a court of law for review of the decision within fourteen days from the date of the decision.

(7) A county operating licence shall be renewed annually.

(8) A person shall not operate a private employment agency without a county operating licence.

(9) A person who operates a private employment agency without a county operating licence commits an offence.

15. (1) The Authority shall establish a migrant workers online portal.

Migrant workers portal.

(2) The migrant workers online portal shall—

- (a) facilitate the registration of private employment agencies;
- (b) facilitate the registration of migrant workers;
- (c) provide details of all registered private employment agencies;
- (d) provide a platform for interaction between the migrant workers and the National and county governments, private institutions, investors, and other relevant institutions;
- (e) provide access to finance, information, innovation, and investments for the migrant workers;
- (f) provide information on job opportunities outside the country;
- (g) provide information on clearances, approvals and registration requirements for migrant workers;
- (h) receive complaints and recommendations from migrant workers, industry stakeholders and the general public; and
- (i) serve as a gateway to all migrant workers' services by the national and county governments.

PART III—PRIVATE EMPLOYMENT AGENCIES

16. (1) A private employment agency shall be registered under this Act.

Registration of a private employment agency.

(2) A person shall not operate a private employment agency unless the person is registered under this Act.

(3) A person who contravenes sub section (2) commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

17. (1) A person who intends to register a private employment agency shall apply to the Director-General for registration in the manner prescribed in regulations.

Application for registration.

(2) Upon receipt of the application made under sub section (1), the Director-General shall submit the application to the Committee for vetting and approval.

(3) The Committee may, while assessing an application made under this section—

(a) summon and interview the directors of a private employment agency; and

(b) conduct any necessary investigations with regard to the application for registration.

(4) After assessing the application for registration, the Committee shall—

(a) if satisfied that the application for registration complies with the requirements of this Act relating to registration, approve the application and direct the Director-General to issue a certificate of registration in the prescribed form; or

(b) where the application does not comply with the requirements of this Act relating to registration, reject the application and require the Director-General to communicate such rejection to the applicant in writing, giving reasons for the rejection.

(5) Despite subsection (4) (a), in the case of a private employment agency engaged in the recruitment of workers for foreign employment, a certificate of registration shall not be issued if the applicant has not executed the security bond specified in section 20.

(6) A registered private employment agency shall display its certificate of registration in a conspicuous place at the premises where the business is carried on.

(7) A certificate of registration issued under this section is not transferable.

(8) A certificate of registration shall, unless cancelled earlier, be valid for a period of one year from the date of issuance.

(9) A private employment agency may apply for renewal of the certificate upon expiry of the certificate.

18. (1) A private employment agency applying for registration shall provide the Authority with proof of—

Conditions for registration of private employment agencies.

(a) registration in Kenya as a—

(i) company under the Companies Act; or

Cap 486.

(ii) partnership firm under the Partnerships Act; or

Cap 29.

(iii) limited liability partnership under the Limited Liability Partnership Act; or

Cap 30.

(iv) non-governmental organization under the Non-Governmental Organizations Co-ordination Act;

Cap 134.

(b) a county operating licence;

(c) financial capacity as prescribed by the Authority;

(d) existence of new market;

(e) experience in human resource management; and

(f) a duly notarised undertaking for liability for claims or damages for its commissions and omissions.

(2) A private employment agency shall not be registered if—

(a) it does not meet the requirements for registration prescribed in this Act and regulations;

(b) it provides, in the application, information which is false or incorrect;

(c) there is continued non-compliance with the Act by the applicant;

(d) it or any of its directors have been convicted of human trafficking or human smuggling; or

- (e) it is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.

19. (1) Every private employment agency that is engaged in the recruitment of workers for foreign employment shall, upon receiving a notification of approval and notification of payment from the Director-General, execute a security bond as prescribed by the Cabinet Secretary with a bank or an insurance company registered and licensed in Kenya.

Security bond.

(2) The security bond under sub section (1) shall be—

- (a) valid for a period of one year and shall run concurrently with the validity period of the certificate of registration; and
- (b) used for the purpose of repatriation and other entitlements in the event of default by the private employment agency or the employer.

(3) The security bond shall not be sourced from the capital of the private employment agency.

20. (1) The Authority may cancel the certificate of registration of a private employment agency if—

Cancellation of registration.

- (a) any information given by the private employment agency is false or misleading;
- (b) the holder of the certificate of registration fails to comply with any requirement of this Act;
- (c) the private employment agency fails to file periodic returns;
- (d) the private employment agency violates any condition of the certificate of registration;
- (e) the private employment agency fails to comply with any direction or order issued by the Authority under this Act; or
- (f) registration was fraudulently acquired.

(2) The Cabinet Secretary may, by notice in the *Gazette* prescribe other grounds for cancellation of registration.

(3) The Committee shall, when cancelling the registration of a private employment agency, be guided by the provisions of the Fair Administrative Action Act.

Cap 7L.

21. (1) The Director-General shall keep and maintain an up to date register of private employment agencies.

Register of private employment agencies.

(2) The register shall be a public document and available for inspection by any person.

(3) The register under sub section (1) may be in electronic form.

22. (1) A registered private employment agency that seeks to open a branch shall apply to the Authority for registration of the branch in the manner prescribed in regulations.

Branches.

(2) The Authority shall upon receipt of the application, cause the premises to be inspected and shall—

- (a) if satisfied that the proposed branch meets the requirements of this Act and regulations issue a licence; or
- (b) where the applicant does not meet the requirements for registration, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

23. (1) A private employment agency that seeks to change its registered office or branch office shall apply to the Authority for change of office in the manner prescribed in regulations.

Change of office.

(2) The Authority shall upon receipt of the application, cause the premises to be inspected and shall—

- (a) if satisfied that the new office or a branch office meets the requirements of this Act and regulations issue a licence; or
- (b) where the new office or a branch office does not meet requirements of this Act and regulations, reject the application and communicate the rejection to the applicant in writing, giving reasons for the rejection.

24. (1) A private employment agency shall submit every job order to the Authority for approval.

Approval of job orders.

(2) A job order for foreign employment shall be attested by the relevant Kenya mission and thereafter submitted by the private employment agency to the Authority for approval.

(3) The Authority shall not approve a job order unless the terms and conditions of employment are compatible with the minimum Kenyan statutory requirements.

25. (1) A private employment agency shall not issue any advertisement calling for applications for employment unless—

Advertisement of jobs by private employment agencies.

(a) the Authority has approved the advertisement; and

(b) the advertisement is in the manner prescribed in regulations.

(2) The Authority may, if satisfied that the proposed advertisement or notification calling for applications for employment complies with this Act and regulations, approve the issuance of the advertisement or notification.

(3) The Authority may refuse to grant approval under this section if it is satisfied that—

(a) the nature of employment for which persons are to be recruited is degrading or inhuman;

(b) the terms and conditions offered to the workers are not satisfactory;

(c) the lives of workers would be endangered by reason of civil war or political disturbances in the country in which they are to be employed;

(d) the health and safety of the workers would be endangered; or

(e) the requirements prescribed in regulations have not been complied with.

(4) A private employment agency which has obtained approval under this section may advertise job vacancies within their premises, a public office or through the media.

(5) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not

exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both.

26. The Authority may prescribe a code of conduct for private employment agencies.

Code of conduct
for private
employment
agencies.

27. (1) A private employment agency shall—

(a) keep and maintain an up to date register of recruited workers and provide this to the Authority as and when required;

Obligations of
private
employment
agencies.

(b) provide the contract of employment to the migrant worker at least fourteen days before the date of departure;

(c) ensure that a contract of employment complies with the provisions of any relevant written law, bilateral labour agreements and memoranda of understanding between Kenya and the countries of destination;

(d) keep and maintain any record which, by regulations made under this Act, is required to be kept for a period of three years subsequent to the occurrence of the event recorded;

(e) notify the Authority of any migrant worker who is in distress;

(f) inform the Authority in writing of any change in the particulars stated in the application for a certificate of registration within thirty days of such change; and

(g) file such returns as may be prescribed in regulations.

(2) A private employment agency shall not charge or receive in respect of anything done or to be done at an employment agency—

(a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area or class of business; or

(b) any fee, payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall upon conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART IV— PRE-DEPARTURE PROCEDURE FOR FOREIGN EMPLOYMENT

28. (1) A person who desires to travel to another country for purposes of foreign employment shall undertake pre-departure orientation.

Pre-departure orientation.

(2) The Cabinet Secretary may prescribe the categories of employees who shall undertake pre-departure orientation.

29. The National Industrial Training Authority established under section 3 of the Industrial Training Act shall in conjunction with the Authority and other labour industry players develop curricula on, among others—

The National Industrial Training Authority role in pre-departure training.

- (a) contract management;
- (b) the culture and laws of the countries of destination
- (c) social media management;
- (d) attitudes on customer service;
- (e) languages of the countries of destination;
- (f) assessment of migrant workers' skills;
- (g) certification of migrant workers' skills;
- (h) training, assessment and certification of homecare; and
- (i) financial literacy.

30. (1) Where an employer who is not resident in Kenya or a private employment agency intends to recruit a migrant worker for foreign employment, the employer or the private employment agency shall arrange for the conclusion of a contract of employment between the employer and the migrant worker before departure from Kenya.

Foreign contracts of employment.

(2) A foreign contract of employment shall be—

- (a) in the prescribed form;
- (b) signed by the parties to the contract; and
- (c) attested by a labour officer.

(3) A private employment agency shall be considered to be a representative of the foreign employe and liable for breach of any term of the foreign contract of employment under subsection (1).

(4) Despite subsection (1), a migrant worker who is recruited under a government to government arrangement shall have his foreign contract of employment attested in accordance with this Act.

31. (1) A foreign contract of employment shall not be attested unless the labour officer is satisfied that—

Attestation of
foreign contracts
of employment.

- (a) the private employment agency is registered with the Authority;
- (b) the private employment agency has executed a security bond;
- (c) the employee has not been induced to enter into the contract through fraud, coercion, undue influence, mistake of fact or misrepresentation;
- (d) the terms and conditions of employment contained in the contract comply with approved job orders and the provisions of the employment laws;
- (e) the employee is medically fit for the performance of the duties stipulated in the contract and a medical certificate in the prescribed form has been given to the attesting labour officer in respect of that employee;
- (f) the employee is not bound to serve under any other contract of employment during the period provided in the foreign contract of employment; and
- (g) the employee has undertaken pre-departure orientation.

(2) The employee shall appear in person before a labour officer for purposes of attestation.

32. (1) Where an—

Security in foreign contracts of employment.

(a) employer who enters into a foreign contract of employment does not reside or carry on business within Kenya; or

(b) employer resides in Kenya,

the Commissioner for Labour may require the employer to give a security bond in the prescribed form, with one or more sureties resident in Kenya and approved by the Commissioner for Labour for the due performance of the contract in such sums as the Commissioner for Labour considers reasonable.

(2) Where the employer has an authorised agent resident in Kenya, the Commissioner for Labour 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 or her principal.

33. A person who—

Offence to induce a migrant worker to proceed abroad under informal contract.

(a) employs, engages, or knowingly aids in the employment or engagement of a migrant worker with the intention that when so employed or engaged that person shall proceed outside the borders of Kenya; or

(b) induces or attempts to induce a migrant worker to proceed outside the borders of Kenya,

unless the person has duly entered into a foreign contract of employment with the migrant worker under this Act, commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.

34. (1) A person who intends to travel to another country for purposes of foreign employment shall apply to the Authority for registration.

Registration of migrant workers.

(2) The application for registration under subsection (1) shall be accompanied by an attested foreign contract of employment.

(3) The Authority shall, upon reviewing the application under subsection (1) —

- (a) record the particulars of the worker in the prescribed manner; and
- (b) subject to the fulfilment of all requirements relating to migration, issue a clearance certificate to the migrant worker.

(4) A migrant worker who is not registered under subsection (1) shall register with the Kenya mission in the country where the worker is employed within ninety days of employment.

(5) A person who contravenes sub section (1) or (4) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months.

35. (1) The Authority shall keep and maintain an up to date register of migrant workers in each foreign country.

Register of
migrant workers.

(2) The register under subsection (1) may be in electronic form.

(3) A copy of the register kept and maintained under subsection (1) shall be kept by every Kenya Mission in each foreign country.

36. The departure of a migrant worker for foreign employment shall be from a port or point of exit that is designated by the Director of Citizenship and Immigration.

Port of departure.

37. This Part shall not apply to the departure of—

Exemption of
certain persons.

- (a) a person employed in the service of the national government or county government, who, with permission from a competent authority, is going overseas to perform an official duty or for the purposes of education or training, or for employment with an international or multilateral organisation;
- (b) a student;
- (c) a trainee;
- (d) a tourist;
- (e) employed seafarers;

- (f) a person emigrating at self-initiative for employment in a foreign country;
- (g) a person emigrating to a foreign country for the purpose of medical treatment and care, or for religious, business or investment purposes;
- (h) a dependant of any Kenyan citizen employed in a foreign country or lawfully staying in a foreign country;
- (i) a person who initially emigrated for education and later accepted employment in a foreign country; or
- (j) a person emigrating for a purpose which is not in conflict with the purposes of this Act.

PART V—ENFORCEMENT

38. (1) The Authority shall, by notice in the *Gazette*, appoint qualified persons, whether by name or by title of office, to be inspectors of the Authority for such jurisdiction units as shall be specified in the notice appointing them.

Appointment of inspectors.

(2) An inspector shall—

- (a) monitor compliance with the provisions of this Act; and
- (b) perform such other functions as may be required under this Act or under the instrument appointing him.

39. (1) An inspector may, without notice and at any reasonable time during the day, enter any premises for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence under this Act.

Powers of inspectors.

(2) In the exercise of the powers conferred upon an inspector by subsection (1), the inspector may—

- (a) require a private employment agency to produce any books or documents which relate to its business;
- (b) at any place require any person who has the possession, custody or control of any books or

documents relating to the business of any person who is or was managing a private employment agency, to produce the books or documents;

- (c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b);
- (d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); or
- (e) seize any book or document referred to in paragraph (a) or (b) that in his opinion, may afford evidence of the commission of an offence under this Act.

(4) Every private employment agency and every person employed by the private employment agency, shall at any reasonable time, furnish such reasonable facilities as may be required by an inspector for entering the premises for the purpose of inspecting or examining the books and documents kept on the premises, or for making any inquiry in relation thereto.

(5) A person shall not—

- (a) make a false statement in any representation to an inspector investigating a case under this section which that person knows to be false in any material particular;
- (b) refuse to answer any question which an inspector, in the exercise of his or her functions under this section, asks him or her;
- (c) refuse to comply, to the best of his or her ability, with any requirement made by an inspector in the exercise of his functions under this section; or
- (d) hinder an inspector in the exercise of his or her functions under this section.

(6) A person who contravenes any provision of subsection (5) commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three months.

40. The Authority may issue to a private employment agency such orders as it may consider necessary for compliance with the provisions of this Act.

Orders of the
Authority.

PART VI—MISCELLANEOUS PROVISIONS

41. (1) The Cabinet Secretary may, by notice in the *Gazette*, restrict the migration of Kenyan workers to any country if the migration to that country may jeopardize public or state interest or the health and safety of the migrant workers.

Restrictions on
labour migration.

(2) The Cabinet Secretary may, by notice in the *Gazette*, in the public interest or for preservation of human resources, temporarily restrict migration of a category of workers to any country.

42. (1) The repatriation of a migrant worker and his or her personal belongings shall be the primary responsibility of the private employment agency which deployed the worker and all costs attendant to repatriation shall be borne by or charged to the agency if—

Repatriation of
migrant workers.

- (a) the migrant worker is found on medical examination to be unfit for employment;
- (b) the migrant worker fails to secure the employment signed for under the contract of employment; or
- (c) the Authority finds that the migrant worker has been employed by misrepresentation or mistake.

(2) Repatriation of the remains and personal belongings of a deceased migrant worker shall be facilitated by the private employment agency in collaboration with the employer within one month of the death of a migrant worker.

(3) Despite sub section (1) and (2) where the termination of employment is due solely to the fault of the migrant worker, the private employment agency shall not be responsible for the repatriation of the migrant worker.

(4) A private employment agency that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding five million.

43. (1) The national government may conclude a memorandum of understanding, a bilateral labour agreement or any other instrument with another country to—

Bilateral labour
agreements.

- (a) enhance safe, fair and orderly migration;

- (b) increase opportunities for migration by Kenyan citizens for foreign employment;
- (c) improve the management of labour migration;
- (d) improve the repatriation and reintegration of the migrant workers; and
- (e) safeguard the welfare and rights of migrant workers and the members of their families.

(2) Any memorandum of understanding, bilateral labour agreement or any other instrument under the subsection (1) shall be concluded on the basis of the following principles, among others —

- (a) promotion of fair recruitment;
- (b) protection of the migrant workers' rights;
- (c) safety and human dignity of migrant workers within the country;
- (d) protection of labour and other human rights of Kenyan migrant workers in the concerned country;
- (e) respect to international standards;
- (f) migrant workers' right to information; and
- (g) right to redress if their rights are violated in the concerned country.

44. (1) A person may submit a petition to the Cabinet Secretary on any activity of a private employment agency.

Petitions to the Cabinet Secretary on private employment agencies.

(2) A petition shall set out —

- (a) the name of the private employment agency;
- (b) whether the issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body;
- (c) activities of the private employment agency in question;
- (d) a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates; and
- (e) the name and address of the person making the petition.

(3) The Cabinet Secretary shall consider the petition presented under subsection (1) within one month.

(4) The Cabinet Secretary shall, within fifteen days of his or her decision, in writing, notify the petitioner of his decision.

(5) The Cabinet Secretary may, in the performance of his or her functions under this Act, consult with such other persons or bodies as he or she may consider necessary.

45. A person who is aggrieved by any administrative decision made under this Act, may appeal to the Employment and Labour Relations Court within thirty days of the decision.

Appeals.

46. A person who—

Offences.

- (a) engages in the deployment of a migrant worker in a job which is harmful to the health, security or dignity of the migrant worker;
- (b) substitutes or alters a foreign contract of employment that has been approved and attested by a labour officer without the approval of the labour officer; or
- (c) withholds the travel documents of a migrant worker before departure for monetary or financial consideration, or for any other reason, other than those authorized under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding two years, or both.

47. (1) A person who commits an offence under this Act for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding two years, or to both.

General penalty.

(2) In addition to any penalty referred to in sub-section (1), the Court may—

- (a) order the revocation of the certificate of registration of a private employment agency; or
- (b) prohibit the doing of any act to stop the continued contravention of this Act.

48. The Cabinet Secretary for matters relating to foreign affairs shall establish safe houses in labour destination countries to provide temporary holding for migrant workers in distress.

Safe houses.

49. (1) The Cabinet Secretary may, in consultation with county governments, make regulations necessary for the purpose of giving effect to, or for the better administration of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may prescribe—

- (a) forms to be used under this Act;
- (b) the manner in which registers are established or maintained under this Act, including the details or particulars required to be entered in the registers;
- (c) content and duration of pre-departure orientation programmes;
- (d) exemption of any area, occupation, organization or class of persons from any part of this Act;
- (e) fees to be paid under this Act;
- (f) fees which may be charged in respect of the business of a private employment agency;
- (g) requirements for opening branches;
- (h) cancelation of certificates of registration;
- (i) records to be kept in respect of a private employment agency;
- (j) premises to be used by private employment agencies;
- (k) qualifications of the directors or persons operating private employment agencies;
- (l) procedure for change of physical location of the office;
- (m) filing of returns by private employment agencies;
- (n) nature and form of security to be given by the proprietor of a private employment agency for any recruitment of employees;

- (o) procedure for making or paying claims for compensation under the security bond; and
- (p) procedure for lodging complaints with the Authority.

50. (1) A person who at the commencement of this Act is carrying on business as a private employment agency on the authority of registration certificate issued under the Labour Institutions Act shall apply for fresh registration under this Act within six months of the commencement of this Act.

Transitional provisions.

(2) Any administrative direction made by the Cabinet Secretary, the Commissioner for Labour, the Committee or the Authority under the Labour Institutions Act in force immediately before the commencement of this Act shall have force as if it was a direction made by the Cabinet Secretary, the Commissioner for Labour, the Committee or the Authority under this Act.

(3) Any statutory instrument made under the Labour Institutions Act or the Employment Act shall remain in force, so far as it is not inconsistent with this Act, until it is revoked by a statutory instrument made under this Act, and shall be deemed for all purposes to have been made under this Act.

51. The laws identified in the Schedule are amended as provided.

Consequential amendments.

SCHEDULE

(S. 51)

CONSEQUENTIAL AMENDMENTS

Act	Section	Amendment
The Labour Institutions Act, Cap 234	2	Delete definition of Director
	2	Delete the definition of Director
	6 (1) (g)	Delete director of employment and substitute therefor with director general of the National Employment Authority.
	30(1) (b)	Delete
	30 (1) (c)	Delete the words “and employment”
	30 (2) (b)	Delete.
	32 (2) (b)	Delete.
	32 (2)	Delete
	32 (4)	Delete the words “the Director of Employment”.
	33(1)(b)	Delete
	36	Delete
	42 (1)	Delete the words “and the Director of Employment”
	42 (3)	Delete
	54A	Delete
	54B	Delete
	54C	Delete
	55	Delete
	56	Delete
	57	Delete
	58	Delete
	59	Delete
	60	Delete
The Employment Act, Cap 226	83	Delete
	84	Delete
	85	Delete
	86	Delete

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object 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. The Bill seeks to consolidate the laws relating to labour migration and proposes to repeal sections of the Labour Institutions Act and the Employment Act.

Part I of the Bill provides for preliminary matters such as the interpretation of terms used in the Bill, objects of the Act and the application of the Act.

Part II of the Bill provides for the administration of the Act. This Part stipulates the functions of government and the National Employment Authority under the Bill and specifies the powers necessary for the performance of those functions. It establishes the Multi-Agency Committee on Vetting of Private Employment Agencies which is responsible for vetting and approving applications for registration made by private employment agencies. This Part also outlines the functions of labour attaches.

Part III of the Bill provides for the registration of private employment agencies and the cancellation of such registration. This Part also provides for the execution of security bond by private employment agencies engaged in the employment of workers for foreign employment. The security bond is intended to be used in the repatriation, payment of wages and other entitlements in the event of default by the private employment agency or the employer. It also provides for the approval of job orders and the advertisement of jobs by private employment agencies and the development of a code of conduct for employment agencies.

Part IV of the Bill provides for pre-departure procedures for foreign employment. This Part provides for pre departure training for migrant workers, the attestation of foreign contracts of employment and the registration of migrant workers. The part also exempts certain classes of persons from the pre departure procedures. Part V of the Bill provides for enforcement of the Act and provides for the appointment of inspectors and their functions and powers.

Part VI of the Bill provides for miscellaneous matters such as the establishment of the Migrant Workers Welfare Fund under the Public Finance Management Act., the repatriation of migrant workers, conclusion of bilateral labour agreements, appeals against administrative decisions made under the Bill, general offences, general penalty, establishment of

safe houses in destination countries, the power of the Cabinet Secretary to restrict labour migration and to make regulations and transitional provisions.

Schedule provides for repealed laws.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers, nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill mandates the national government to consult county governments in creation of registers and investment opportunities for migrant workers hence affecting the functions of county governments in terms of developmental planning.

The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 19th July, 2024.

MUTINDA MAUREEN TABITHA,
Senator.