

PARLIAMENT OF KENYA
THE SENATE
SENATE BILLS DIGEST
THE LABOUR MIGRATION MANAGEMENT (No. 2) BILL, 2024
(SENATE BILLS NO. 42 OF 2024)

Sponsor:	Senator Mutinda Maureen Tabitha
Date of Publication:	26 th July, 2024
Date of First Reading:	18 th September, 2024
Committee referred to:	Standing Committee on Labour and Social Welfare
Type of Bill:	Ordinary Bill

1. PURPOSE OF 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, 2007 and the Employment Act, 2007.

2. BACKGROUND OF THE BILL

Labour Migration: Highlights of Migrant Issues

According to the Ministry of Labour, Kenyans migrate to different parts of the World, including Europe, United States of America (USA), Asia, and Latin America. Others destinations include Canada, Australia, Middle East and Gulf region and selected countries in Africa such as Uganda, Tanzania, South Sudan, Rwanda, Botswana, Lesotho and South Africa. However, the Arab States are emerging as key labour destinations.

Global labour migration is not a new phenomenon but remains a key contributor to the increasing global labour market. Needless to say, Kenyan migrant workers, both skilled and unskilled transcend borders in search of better opportunities. This is attributed to increased human mobility, rapid globalization and open borders, technological advancement and demographic challenges. In particular, youth unemployment which stands at 34.27 percent is key driver to the increasing number of Kenyans seeking employment in other major cities.

The Middle East, and in particular the Kingdom of Saudi Arabia (KSA), Qatar and Dubai remain the key labour destinations for Kenya's semi and unskilled migrant workers. While labour migration is viewed positively given its contribution to socio-economic wellbeing of families while enabling the transfer of technology and skills, its downside remains a policy issue.

Globally, low skilled migrant workers remain vulnerable to abuse, receive inadequate wages, experience poor working conditions and are occasionally discriminated against. It is also reported that with the increase in numbers of Kenyans exiting the country for domestic assignments in the Middle East, there has been a corresponding increase in distress calls by those alleging torture and mistreatment by their employers.

This explains the September 2014, attempt to address the challenges facing migrant domestic workers, through the government's ban on the export of labour and a further set up a task force to review the management of foreign employment. However, lifting of the ban in 2016 and five years later in to continued activities, incidents of families calling on the government for assistance on behalf of their distressed relatives in the Gulf States continue unabated.

Current law

The Labour Institutions Act, Cap. 234 provides for the registration and regulation of employment bureaus and agents by an Inter-Ministerial Committee consisting of officers from: the Ministry responsible for immigration; the Ministry responsible for labour; the Ministry responsible for security; the Attorney-General; and the Ministry responsible for foreign affairs.

The Employment Act, Cap. 226 provides for the foreign contracts of service and mandates that every foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a labour officer.

Rationale for the Bill

The Bill seeks to solve the challenges faced by many Kenyan migrant workers both locally and in the countries of destination. Key amongst these challenges include: inadequate coordination of labour migration; weak regulation of recruitment agencies; violation of the fundamental rights of migrant workers; lack of accurate, up-to-date and reliable data and information on labour migration and migrant

workers; weak cooperation and partnerships between countries and regions in international labour migration management; and lack of effective mechanisms for return and re-integration of migrant workers.

3. OVERVIEW OF THE BILL

Application of the Bill.

The Bill shall apply to—

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

Conditions for deployment of migrant workers

Under the Bill, deployment of migrant workers shall be to countries that, among other things—

- (a) have existing labor and social laws protecting the rights of migrant workers;
- (b) are signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; and
- (c) have existing bilateral agreement or arrangement with the government protecting the rights of migrant workers.

Functions of the National Employment Authority.

The functions of the Authority under this Act shall be to—

- (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;
- (h) develop and implement a return and reintegration programme for migrant workers;

- (i) receive and investigate complaints from migrant workers, job seekers, private employment agencies or any person; and
- (j) create public awareness on safe, regular and orderly labour migration.

Multi-Agency Committee on Vetting of Private Employment Agencies

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 of the National

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

Labour Attaché's

Cabinet Secretary for matters relating to labour shall deploy a labour attaché to serve in each Kenya Mission. 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) collect and collate labour migration data and statistics on Kenyan migrant workers in that country;
- (e) provide labour market information to migrant workers;
- (f) analyze and advise the Cabinet Secretary on the demand for foreign labour in the respective country;
- (g) attest foreign contracts of employment;
- (h) supervise and coordinate the operations of safe houses for migrant workers in that country; and

- (i) submit to the Cabinet Secretary an annual report and recommendations relating to the conditions of migrant workers working in that country.

The duties of the Cabinet Secretary for Foreign Affairs

The Cabinet Secretary for Foreign Affairs shall put in place mechanisms to safeguard the welfare of migrant workers including —

- (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.

Role of county governments.

A county government shall—

- (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.

Migrant workers' portal.

The National Employment Authority shall establish a migrant workers online portal to, among other things—

- (a) facilitate the registration of private employment agencies;
- (b) facilitate the registration of migrant workers;
- (c) provide details of all registered private employment agencies; and

- (d) provide platform for interaction between the migrant workers and the National and county governments, private institutions, investors, and other relevant institutions.

Conditions for registration of private employment agencies.

A private employment agency applying for registration shall provide the National Employment Authority with proof of—

- (a) registration in Kenya as a—
 - (i) company under the Companies Act; or
 - (ii) partnership firm under the Partnerships Act; or
 - (iii) limited liability partnership under the Limited Liability Partnership Act; or
 - (iv) non-governmental organization under the Non-Governmental Organizations Coordination Act;
- (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.

Security bond by private employment agencies

Every private employment agency that is engaged in the recruitment of workers for foreign employment shall execute a security bond as prescribed by the Cabinet Secretary for labour matters with a bank or an insurance company registered and licensed in Kenya. The security used for the purpose of repatriation and other entitlements in the event of default by the private employment agency or the employer.

Cancellation of registration of private employment agency

The National Employment Authority may cancel the certificate of registration of a private employment agency if—

- (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 law;
- (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; or
- (f) registration was fraudulently acquired.

Approval of job orders.

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

Advertisement of jobs by private employment agencies.

A private employment agency shall not issue any advertisement calling for applications for employment unless—

- (a) the National Employment Authority has approved the advertisement; and
- (b) the advertisement is in the manner prescribed in regulations.

Obligations of private employment agencies

A private employment agency shall—

- (a) keep and maintain an up to date register of recruited workers and provide this to the National Employment Authority as and when required;
- (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 the law, is required to be kept for a period of three years subsequent to the occurrence of the event recorded;
- (e) notify the National Employment Authority of any migrant worker who is in distress;
- (f) inform the National Employment 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.

Attestation of foreign contracts of employment

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

- (a) the private employment agency is registered with the National Employment 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.

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

The National Industrial Training Authority shall in conjunction with the National Employment Authority and other labour industry players develop curricula on, among others—

- (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.

Exemption of certain persons from the Bill

The Bill shall not apply to the departure of—

- (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.

Role of Inspectors

The National Employment Authority shall, by notice in the *Gazette*, appoint qualified persons, whether by name or by title of office, to be inspectors of the Authority to monitor compliance with the provisions of the Bill.

Repatriation of migrant workers.

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—

- (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.

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.

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.

Bilateral Labour Agreements

Any memorandum of understanding, bilateral labour agreement or any other instrument 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

Other provisions of the Bill

Other provisions of the Bill include—

- (a) registration of migrant workers;
- (b) establishment of safe houses in destination countries; and
- (c) the power of the Cabinet Secretary to restrict labour migration to countries where Kenyans face distress.

4. CONSEQUENCES OF THE BILL

The Bill will provide a harmonized legal framework for the regulation of private employment agencies and the recruitment of workers within and outside Kenya and safeguard the rights and welfare of job seekers and migrant workers. The Bill will consolidate the laws relating to labour migration.

5. WAY FORWARD

What next?

Pursuant to standing order 145 of the Senate Standing Orders, the Standing Committee on Labour and Social Welfare shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the Senate.

What is expected of the members of public?

The members of the public are expected to present their views to the Standing Committee on Labour and Social Welfare for its consideration.

Next step

The Bill was Read a First Time in the Senate on 18th September, 2024. Pursuant to standing order 148 of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, by 18th October, 2024.

Note:

The Digest does not have any official legal status.